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E. P. Clark.





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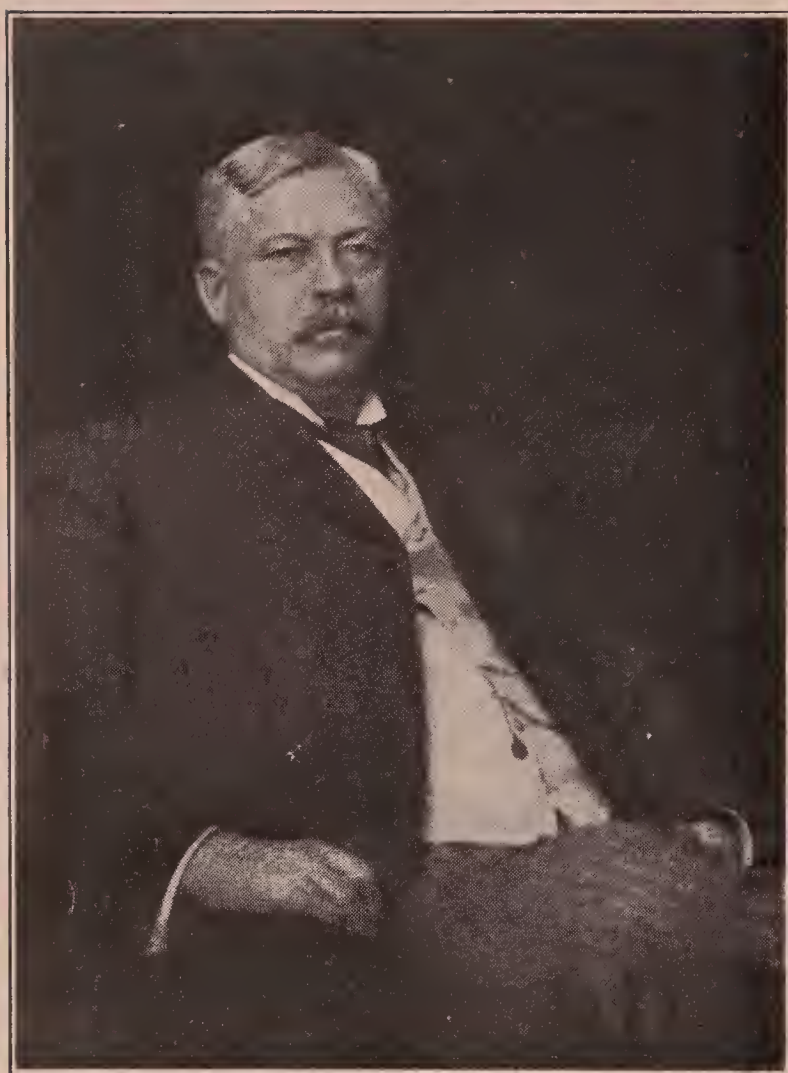


# Great Sayings By Great Lawyers



Great Britain and Ireland





Yours Truly,  
G. J. Clark.



# Great Sayings By Great Lawyers ✓

*Immortal Thoughts Snatched from Oblivion*

✓BY  
*G. J. Clark*  
G. J. CLARK ✓

*"If the grain was separated from the chaff which fills  
the works of writers, what is truly valuable would be  
to what is useless in the proportion of a mole-hill  
to a mountain."*

—Edmund Burke

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## FOREWORD

IMMORTAL THOUGHTS—*Sayings by the great leaders of the legal profession*—are the fruition of a conscientious and enjoyable lifelong study of the Great Beacon Lights of Jurisprudence covering a period of eight centuries.

Condensed Excerpts—The ACTUAL FACTS concerning the characters, *whether pleasing or otherwise* (the essence of their histories), are here recorded, enabling the thinking reader to form his own conclusions. This method seems to the author much more satisfactory than reading the fulsome praise and ingenious cogitations of flattering biographers.

To compress so much within one volume is an audacious task, but the thirty-three years and the unremitting effort are deemed justifiable as, Dr. Samuel Johnson counts “him a benefactor of mankind who condenses the great thoughts and rules of life into short sentences that are easily impressed on the memory and recur promptly to the mind.”

Naturally in these delineations of the great lights of the bench and bar of America and Britain, omissions will be noticed and when observed, let the apt line from Pope be applied: “*To err is human, to forgive divine.*”

Blank spaces have been filled in with extra matter in addition to the Monographs. These excerpts, epitomized in the “Additional Table of Contents,” and included in the “General Index,” it is believed will increase the value of the book as a reference work.





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# Great Sayings By Great Lawyers

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## CHARLES ABBOT, LORD TENTERDEN (1762-1832), England

Had an income, as a lawyer, of \$40,000 a year; Chief Justice, 1818, held position nine years; wrote, when 40, "Merchants' Ships and Seamen."

### AN ATTORNEY NOT BOUND TO KNOW ALL LAW

"No attorney is bound to know all the law. God forbid that it should be imagined that an attorney, or a counsel, or even a judge, is bound to know all the law."—*Montrou v. Jefferies*, 10 M. and W., 158.

### HIS LAST WORDS

"And, now gentlemen of the jury, you will consider of your verdict."  
—*Said while delirious.*

### HIS YOUTHFUL AMBITION—TO BE A SINGER

"Do you see that old man there amongst the choristers? In him, behold the only being I ever envied: when at school in this town, we were candidates together for a chorister's place; he obtained it; and if I had gained my wish he might have been accompanying you as Chief Justice, and pointing me out as his old school-fellow, the singing-man."  
—*Said to Judge Richardson, when they attended services in the Cathedral of Canterbury.*

### LORD CAMPBELL'S ESTIMATE OF LORD TENTERDEN

"The impartial biographer cannot say that he was a great man, but he was certainly a great magistrate. To the duties of his judicial office he devoted all his energies, and on the successful performance of them he rested all his fame."—*4 Lives of the Chief Justices*, 298 and 340.

### THE OBSCURITY OF HIS BIRTH

The obscurity of Abbot's birth is well known, but he had too much sense to feel any false shame on that account. It is related of him that when, in an early part of his professional career, a brother barrister with whom he happened to have a quarrel, had the bad taste to twit him of his origin, his manly and severe answer was, "Yes, sir, I am the son of a barber. You would have been a barber yourself."

### RHETORICAL DISPLAYS DISCOURAGED IN HIS COURT

He would tolerate no fine displays in his court.

"It is asserted in Aristotle's Rhetoric," argued a pedantic barrister to his Lordship.

"I don't want to hear what is asserted in Aristotle's Rhetoric," interposed the Chief Justice.

"It is laid down in the 'Pandects of Justinian——' "

"Where have you got to now?"

"It is a principle of the Civil Law——"

"Oh, sir, we have nothing to do with civil law in this court."



## JOHN MACDONNELL'S ESTIMATE OF LORD TENTERDEN

"In no sense, was Lord Tenterden great. As a lawyer he was surpassed in acuteness and erudition by some judges of his own time. He was totally destitute of eloquence, and rather despised it, as an impediment to justice. He showed to disadvantage in an office which Mansfield had recently filled, and it was a grave defect in his conduct as Chief Justice that he granted the perilous remedy of criminal informations in circumstances, in which Hale and Holt would have refused it. He had no pleasure in deducing from the common law paradoxes offensive to justice. The court over which he presided was respected, and his decisions are still referred to with deference."

Lord Eldon wrote Lord Kenyon: "We endeavored the best we could. We could not do what would have been exceptionable. It was impossible."—*This was said of Abbot as following Ellenborough.*

## REBUKED JAMES SCARLETT

When Sir James Scarlett in a speech before the jury, referred to the poetry of Southey and Wordsworth, as familiar to the twelve, Lord Tenterden observed, that "for himself he was bred in too severe a school to admire such effusions."

This was true, as during his busiest time, he used to refresh himself from the disgust of dry law, by reading a satire of Juvenal, or a chorus of Euripides. He likewise kept up a familiar knowledge of Shakespeare, Milton, Dryden and Pope, but was little acquainted with the modern school of English poets.—*The Author.*

## NOT A LITERARY MAN

"Lord Tenterden, we are told, did not know the author of Hamlet."  
—*David Paul Brown, 1 "The Forum," 357.*

## STUDIED BOTANY IN OLD AGE

"Tenterden took up the study of Botany late in life as a scientific pursuit, and wrote much poetry in Latin, in imitation of Horace and Ovid. Said when doing so:

"You see I am now on my hobby, and you must be patient while I take a ride."

"Abbot was the son of a barber, was brought up in poverty; born Oct. 17, 1762, died in 1832. He was a wild lad, and it is said his father used to express apprehensions lest he should be obliged to put the boy to another trade requiring less genius than that of a barber. He never rode a horse in his life, his father being too poor when he was a boy to own one, and when in his old age his physician recommended horseback riding. Lord Tenterden was afraid to get onto a horse, for fear that he would fall off. He wrote early in his career a treatise on 'Merchants, Ships and Seamen.' It came out in 1802, and its success was complete, and it acquired fame in America. In the year 1807, when 45 years of age, his income is known to have been large, as he returned for the income tax an income of \$40,130 a year. And Erskine in all his glory never reached \$50,000 a year. Afterwards he is supposed to have exceeded this; became Chief Justice in 1818, upon the death of Lord Ellenborough, and held the office fourteen years, until his death."

—*4 Campbell's Lives of the Chief Justices, 262.*



## LORD ABINGER (SEE JAMES SCARLETT)

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### JOHN ADAMS (1735-1826), Massachusetts

#### PROSPERITY AND ADVERSITY

"Tell not of your prosperity, because it will make two men *mad* to one *glad*; nor of your adversity, for it will make two men *glad* to one *mad*."—*John Adams, in letter to his wife of his boasting friend Smith, written from Philadelphia, 1773.*

#### THEODORE PARKER'S OPINION OF ADAMS

"Mr. Adams had a great mind, quick, comprehensive, analytical, not easily satisfied save with ultimate causes, tenacious also of its treasures. His memory did not fail until he was old. With the exception of Dr. Franklin, I think of no American politician in the 18th century that was his intellectual superior. For though Hamilton and Jefferson, nay Jay and Madison and Marshall surpassed him in some high qualities, yet no one of them seems to have been quite his equal in all the three departments of the intellect, the Understanding, the great practical power; the Imagination, the poetic power; and the Reason, the philosophical power. \* \* \* At the age of forty years, he was the ablest lawyer in New England (this was in 1775), perhaps, the ablest lawyer in America. He was the most learned in historical legal lore, the most profound in the study of first principles."—*Theo. Parker's 'Historical Americans,' 1870.*

#### GEORGE BANCROFT'S ESTIMATE OF ADAMS

"Looking into himself, he saw weaknesses, but neither meanness nor dishonesty nor timidity. Overweening self-esteem was his chief blemish. Having more learning than Washington, better knowledge of freedom as grounded in law than Samuel Adams, clearer insight into the constructive elements of government than Franklin, more readiness in debate than Jefferson, he could easily fancy himself the center of a circle to which he had been no more than a tangent; and in age vanity sometimes bewildered his memory; but it did not impair the integrity of his conduct. He was humane and frank, generous and clement; if he could never sit placidly under the shade of a greater reputation than his own, his envy had hardly a tinge of malignity. He went to his task, sturdy and cheery and brave; he was the hammer and not the anvil, and it was for others to shrink from his blows. His courage was unflinching in debate, and everywhere else; he never knew what fear was. To his latest old age he saw ten times as much pleasure as pain in the world, and was ready to begin life anew and fight its battle over again."—*4 Bancroft's Hist. U. S., 332.*

"An efficient preparation for war can alone secure peace."  
—*In his Message of 1798.*

"Whenever vanity and gaiety, a love of pomp and dress, furniture, equipage, buildings, great company, expensive diversions, and elegant entertainments get the better of the principles and judgments of men and women, there is no knowing where they will stop, nor into what evils, natural, moral, or political, they will lead us."

"Old minds are like old horses; you must exercise them if you wish to keep them in working order."



"The education of our children is never out of my mind. Train them in virtue, habituate them in industry, activity and spirit, make them consider every vice as shameful and unmanly. Fire them with ambition to be useful. Make them disdain to be destitute of any useful knowledge."

—*From letter to his wife.*

"I answered that the die was now cast; I had passed the Rubicon. Swim or sink, live or die, survive or perish with my country, was my unalterable determination."

—*Adams' Works, Vol. 4, p. 8—to Jonathan Sewall.*

"The second day of July, 1776, will be the most memorable epocha in the history of America. I am apt to believe that it will be celebrated by succeeding generations as the great anniversary festival. It ought to be commemorated, as the day of deliverance, by solemn acts of devotion to God Almighty. It ought to be solemnized with pomp and parade, with shows, games, sports, guns, bells, bonfires, illuminations, from one end of this continent to the other, from this time forward for evermore."

—*Letter to wife, July 3, 1776.*

### GREATNESS OF ENGLAND

"England is now the greatest nation upon the globe. A few people came over into the new world for conscience sake. Perhaps this apparently trivial incident may transfer the great seat of empire into America. It looks likely to me; for if we can remove the turbulent Gallicks (*i. e., drive away the troublesome French*), our people, according to the exactest computations, will in another century become more numerous than England itself. (*It did slightly exceed that of the British Isles in a century*). Should this be the case, since we have, I may say, all the naval stores of the nation in our hands, it will be easy to obtain the mastery of the seas; and then the united forces of all Europe will not be able to subdue us. The only way to keep us from setting up for ourselves is to disunite us. *Divide et Impera*. Keep us distinct colonies; and then some great men in each colony, desiring the monarchy (in the Greek sense of sole control) of the whole, they will destroy each other's influence, and keep the country in *equilibrio*."

—*Written by Adams, then twenty, shortly after graduation, and 20 years before the Revolution, in 1775. (1735-1826).*

### THOROUGH STUDENT OF LAW

"No other in America had studied the science of government and the various forms for reaching political ends so much and so thoroughly as John Adams had done: and the practical tendency of his mind made his advice valuable. Jefferson and Samuel Adams were theoretical, and full of that false republican fear of reposing real governing power anywhere, lest it should be abused: a jealous fear which leads, if it works to its natural results, to an anarchy that invites despotism. It has been the good fortune of America to be neither Hamiltonian nor Jeffersonian. When Jefferson said that the tree of liberty needs frequently to be watered with blood, and that rebellion is a good thing and necessary in the political world, he showed that he lacked the constructive power to conceive a government which should be at once firm enough for civil order and elastic and changeable enough for liberty. Hamilton's schemes missed the same good qualities in an opposite way. Practical people have found ways between the two; and John Adams, misunderstood and called an aristocrat, was of this practical sort. Both Jefferson and Adams were aristocrats to this degree, that they believed the wisest and best should be chosen to lead, to plan, to judge, to execute."—*Samuel Willard,*

*in his 'Life of John Adams,' 1898, p. 56.*



## DUTY TO DEFEND CRIMINAL

"If I can but be the instrument of preserving one life, his blessing and tears of transport shall be a sufficient consolation for me for the contempt of all mankind."

—Said by Adams, when asked why he defended the eight British soldiers for murder, in the Boston Massacre. (*Willard's Life*, 133).

## RULES WHICH MADE ADAMS A GREAT LAWYER AND STATESMAN

"Ride and mount your horse by the morning's dawn, and shake away amidst the great and beautiful scenes of nature that appear at that time of day, all the crudities that are left in the stomach, and all the obstructions that are left in your brains. Then return to your studies, and bend your whole soul to the institutes of the law and the reports of cases that have been adjusted by the rules of the institutes. Let no trifling diversion or amusement of company decoy you from your books: no girl, no gun, no cards, no flutes, no violins, no dress, no tobacco, no laziness."

## DEFENSE OF THE BOSTON TORIES

"The next morning, I think it was, sitting in my office, near the steps of the town-house stairs, Mr. Forest came in, who was then called the Irish Infant. With tears streaming down from his eyes, he said, 'I am come with a very solemn message from a very unfortunate man, Captain Preston, in prison. He wishes for counsel, and can get none. I have waited on Mr. Quincy, who says he will engage, if you will give him your assistance; without it he positively will not. Even Mr. Auchmuty declines, unless you will engage.' I had no hesitation in answering, that counsel ought to be the very last thing that an accused person should want in a free country; that the Bar ought, in my opinion, to be independent and impartial, at all times and in every circumstance, and that persons whose lives were at stake ought to have counsel they preferred. But he must be sensible, this would be as important a cause as was ever tried in any country of the world; and that every lawyer must hold himself responsible not only to his country, but to the highest and most infallible of all tribunals, for the part he should act. He must, therefore, expect from me no art or address, no sophistry or prevarication, in such a cause, nor anything more than fact, evidence, and law would justify. 'Captain Preston,' he said, 'requested and desired more; and that he has such an opinion from all he had heard from all parties of me, that he would cheerfully trust his life with me upon those principles.' 'And,' said Forest, 'as God Almighty is my judge, I believe him an innocent man.' I replied, that must be ascertained by his trial, and if he thinks he cannot have a fair trial of that issue without my assistance, without hesitation he shall have it. \* \* \* "At this time, I had more business at the bar than any man in the Province. My health was feeble. I was throwing away as bright prospects as any man ever had before him, and I had devoted myself to endless labor and anxiety, if not to infamy and to death, and that for nothing, except what indeed was and ought to be in all, a sense of duty. In the evening I expressed to Mrs. Adams all my apprehensions. That excellent lady, who has always encouraged me, burst into a flood of tears, but said she was very sensible of all the danger to her and to our children, as well as to me, but she thought I had done as I ought; she was very willing to share in all that was to come, and to place her trust in Providence."—2 *John Adams' Works*, 230-36.

Of this trial Bancroft says: "The defense was left to John Adams and Quincy, and was conducted with consummate ability. As the



firing upon the citizens took place at night, it was not difficult to raise a doubt whether Preston or some other person had cried to the soldiers to fire; and on that doubt a verdict of acquittal was obtained. \* \* \* The trial of the eight soldiers who were with Preston followed a few weeks later. Two of them were proved to have fired, and were found guilty of manslaughter. As seven guns only were fired, the jury acquitted the other six; choosing that five guilty should escape rather than one innocent be convicted."—3 *Bancroft's Hist. U. S.*, 390-1.

## COURSE OF LAW STUDY

"I have read a multitude of books, mastered but few, Wood, Coke, two volumes of Lillies' Abridgment, two volumes Salkeld's Reports, Swinburne, Hawkins' Pleas of the Crown, Fortesque, Fitzgibon. Ten volumes in folio, I read at Worcester quite through, besides octavos and lesser volumes, and many others, of all sizes, that I consulted occasionally without reading in course, as dictionaries, reporters, entries and abridgments. During the last two years, Justinian's Institutes, I have read through in Latin, with Vinnius' Perpetual Notes, Van Muyden's *Tractat-ic Institutionum Justiniani*. Wood's Institutes of the Civil Law I read through. These on the Civil Law. On the law of England, I read Cowell's Institute of the Laws of England, and Imitations of Justinian, Doctor and Student, Finch's Discourse of Law, Hale's History, and some reporters' Cases in Chancery, Andrews, etc., besides occasional searches for business; also a General Treatise of Naval Trade and Commerce, as founded on law and statutes. All this series of reading has left but faint impressions and a very imperfect system of law in my head. I must form a very serious resolution of beginning and pursuing quite through the plans of Lords Hale and Reeves. Wood's Institutes of Common Law, I never read but once, and my Lord Coke's Commentaries on Littleton, I never read but once. These two authors I must get and read over and over again."

—Adams, in letter of Nov., 1760, when 25 years old. *Charles Warren's History of the American Bar*, 171.

## REASON, JUSTICE AND EQUITY

"Reason, justice and equity never had weight enough on the face of the earth to govern the councils of man. It is interest alone which does it, and it is interest alone which can be trusted; that, therefore, the interests within doors, should be the mathematical representatives of the interests without doors: that the individuality of a colony increase its wealth or numbers. If it does pay equally. If it does not add weight in the scale of the confederacy, it cannot add to their rights, nor weight in argument."

—Said by Adams in the Convention which adopted the Declaration of Independence, Aug., 1775.

## ADVICE WHEN A LAW STUDENT TO HIMSELF

"Labor to get distinct ideas of law, right, wrong, justice, equity; search for them in your own mind, in Roman, Grecian, French, English treaties of natural, civil, common, statute law. Aim at an exact knowledge of the nature, end and means of government. Compare the different forms of it with each other, and each of them with their effects on public and private happiness. Study Seneca, Cicero, and all other good moral writers; study Montesquieu, Bolingbroke, Vinnius, etc., and all other good civil writers."



## JAMES OTIS

In a sketch of James Otis, perhaps the greatest American lawyer in the years immediately preceding the Revolution, President Adams in his old age reiterates these thoughts. Otis he wrote, was:

"A great master of the laws of nature and nations. He had read Puffendorf, Grotius, Burlamqui, Vattel, Heineccius; and in the civil law, Domat, Justinian, and, upon occasions, consulted the *Corpus Juris* at Large. It was a maxim that he inculcated in his pupils, as his patron in the profession, Mr. Gridley, had done before him, 'that a lawyer ought never to be without a volume of natural or public law, or moral philosophy on his table or in his pocket.'"—1 *John Adams' Life and Works*, 46; also *Niles Register*, Vol. 1 (N. S.), 361.

## ADVICE TO HIS SON, THOMAS, JUST ADMITTED

"I always rejoice to hear of your arguing cases. This arguing is the way to business. Argue, Argue, Argue, forever when you can, and never be concerned about the issue, any further than you ought to interest yourself for truth and justice. If you speak in public tho you lose your cause, it will serve your reputation, if you speak well, as much as if you gained it. Hard study and close application to business will infallibly increase your business till it is commensurate with your necessities and affords you a surplus. Science and literature will assist your reputation as much as law."—*Mass. Historical Proceedings*, Vol. 49, 466.

## FISHER AMES

(Upon the death of Fisher Ames, a noted Federalist, one of the greatest orators America has produced, Adams said):

"I have lost the ablest friend I had on earth."

## FRANKLIN ON ADAMS

"Adams was always an honest man, often a wise one, but sometimes wholly out of his senses."—1 *Schouler's U. S. Hist.*, 497.

## EXCERPTS FROM DEFENSE OF CAPTAIN PRESTON

"If Heaven, in its anger, shall ever permit the time to come when, by means of an abandoned administration at home, and the outrages of the soldiery here, the bond of parental affection and filial duty between Britain and the colonies shall be dissolved, when we shall be shaken loose from the shackles of the common law and our allegiance, and reduced to a state of nature, the American and British soldier must fight it out upon the principles of the law of nature and of nations. But it is certain such a time is not yet arrived, and every virtuous Briton and American prays it never may. Till then, however, we must try causes in the tribunals of justice, by the law of the land." \* \* \* Again:—

"Facts are stubborn things, and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence. Nor is the law less stable than the fact. If an assault was made to endanger their lives, the law is clear; they had a right to kill in their own defense. If it was not so severe as to endanger their lives, yet if they were assaulted at all, struck and abused by blows of any sort, by snowballs, oyster-shells, cinders, clubs or sticks of any kind, this was a provocation, for which the law reduces the offense of killing down to manslaughter, in consideration of those passions in our nature which cannot be eradicated." \* \* \* Again:—



"To use the words of a great and worthy man, a patriot and a hero, an enlightened friend of mankind, and a martyr to liberty, I mean Algernon Sydney, who, from his earliest infancy, sought a tranquil retirement under the shadow of the tree of liberty with his tongue, his pen and his sword:"

" 'The law no passion can disturb. 'Tis void of desire and fear, lust and anger. 'Tis *mens sine affectu*, written reason, retaining some measure of the divine perfection. It does not enjoin that which pleases a weak, frail man, but, without any regard to persons, commends that which is good, and punishes evil in all, whether rich or poor, high or low. 'Tis deaf, inexorable, inflexible. On the one hand, it is inexorable to the cries and lamentations of the prisoner; on the other, it is deaf, deaf as an adder, to the clamors of the populace.' "

(Mr. Adams said years afterward, of his defense of Capt. Preston): "The part I took in defense of Captain Preston and the soldiers procured me anxiety and obloquy enough. It was, however, one of the most gallant, generous, manly, and disinterested actions of my whole life, and one of the best pieces of service I ever rendered my country. Judgment of death against those soldiers would have been as foul a stain upon this country as the executions of the Quakers or witches recently. As the evidence was, the verdict of the jury was exactly right."

—2 *Adams' Works*, 317.

#### JOHN ADAMS ON FRANKLIN

"Franklin's reputation was more universal than that of Leibnitz or Newton, Frederick the Great or Voltaire, and his character more beloved and esteemed than all of them. \* \* \* If a collection could be made of all the gazettes of Europe for the latter half of the 18th century, a greater number of panegyrical paragraphs upon *le grand Franklin* would appear, than upon any other man that ever lived."

—*John Adams' Works*, Vol. 1, p. 660-1.

#### ADAMS ON THE GREAT OF BRITAIN AND FRANCE

"Four of the finest writers that Great Britain ever produced were Shaftesbury, Bolingbroke, Hume and Gibbon, whose labors were translated into all languages, and three of the most eloquent writers that ever lived in France whose works were also translated into all languages, Voltaire, Rousseau, and Raynal, seem to have made it the study of their lives and the object of their most strenuous exertions, to render mankind in Europe discontented with their situation in life, and with the state of society, both in religion and government."

—1 *Adams' Works*, 660.

"While Franklin had the singular felicity to enjoy the entire esteem and affection of all the philosophers of every denomination, he was not less regarded by all the sects of Christians. The Catholics thought him almost a Catholic. The Church of England claimed him as one of them. The Presbyterians thought him half a Presbyterian and the Friends believed him a wet Quaker. \* \* \* Indeed all sects considered him, and I believe justly, a friend to unlimited toleration in matters of religion."

—*Adams' Works*, 661.



## JOHN QUINCY ADAMS (1767-1848), Massachusetts

### ON MANSFIELD

"Of the character of Lord Mansfield as a statesman, lawyer and moralist, I have a very different opinion (than the praise of him by Judge Story, in a letter to Adams). As a statesman, his genius cowered before that of Chatham, as a lawyer before that of Camden, and as a moralist his countenance of English smugglers against foreign laws has been justly censured by the Jurists of Continental Europe. I speak of prominent incidents in his life and even without reference to his bitter and rancorous hatred of our country, and opposition to her cause. He was a Scottish Jacobite, metamorphosed by the course of events into a sycophant of the House of Hanover, but in changing his bottom, he carried his principles with him, from the sinking of the floating ship. These principles he had learned in the Roman Law, which was the law of Scotland; a law of wisdom, but of servitude; the law of a great commercial empire, digested in the days of Justinian and containing all the principles of justice and equity suited to the relations of men in society with each other; but by a law under the head of government, was '*Imperator Augustus, legibus solutus*.' To this system Lord Mansfield added the Marine Ordinance of Louis XIV, and from these radical sources engrafted his body of Commercial Jurisprudence upon his stock of the Common Law of England, a law almost entirely agricultural; more than sufficiently poisoned by the feudality of the Norman Conquest, but still illuminated with principles favorable to personal liberty, at least with Jury Trial and the Habeas Corpus. These were unknown to the Roman Law, and if Lord Mansfield did not expunge them from the law of England, it was not for want of his exertion so to do. His principles in our controversy with Great Britain, flowed naturally from his fountain of Roman Law, which knew as little of the link between taxation and representation as of Habeas Corpus and Jury Trial."—*J. Q. Adams, letter to Judge Jos Story, Quincy, Mass., Nov. 4, 1829.*

### A RETROSPECT

"An age of sorrow and a life of storms. As I look back over my existence I see a pathway of mingled roses and thorns; but the roses have long since disappeared, and the thorns only remain."—*J. Q. Adams.*

The above was said by J. Q. Adams, who had everything that almost every human of our generation fancies worth having, and is striving distractedly to get, health, strength, grace, eloquence, culture and popularity.—*The Author.*

### THE WANTS OF MAN

" 'Man wants but little here below,  
Nor wants that little long.'  
'Tis not with me exactly so;  
But, 'tis so in the song.  
My wants are many and, if told,  
Would muster many a score;  
And were each wish a mint of gold,  
I still should long for more.



What first I want is daily bread—  
And canvas backs and wine—  
And all the realms of nature spread  
Before me, when I dine.  
Four courses scarcely can provide  
My appetite to quell;  
With four choice cooks from France beside,  
To dress my dinner well.

What next I want, at princely cost,  
Is elegant attire:  
Black sable furs for winter's frost,  
And silks for summer's fire.  
And Cashmere shawls, and Brussels lace  
My bosom's front to deck,—  
And diamond rings my hands to grace,  
And rubies for my neck.

I want (who does not want?) a wife,—  
Affectionate and fair;  
To solace all the woes of life,  
And all its joys to share.  
Of temper sweet, of yielding will,  
Of firm, yet placid mind,—  
With all my faults to love me still  
With sentiment refined.

And as Time's car incessant runs,  
And Fortune fills my store,  
I want of daughters and of sons,  
From eight to half a score.  
I want (alas! can mortal dare  
Such bliss on earth to crave?)  
That all the girls be chaste and fair—  
The boys all wise and brave.

I want a warm and faithful friend,  
To cheer the adverse hour;  
Who ne'er to flatter will descend,  
Nor bend the knee to power—  
A friend to chide when I'm wrong,  
My inmost soul to see;  
And that my friendship prove as strong  
For him as his for me.

I want the seals of power and place,  
The ensigns of command;  
Charged by the people's unsought grace  
To rule my native land.  
Nor crown or sceptre would I ask  
But from my country's will,  
By day, by night, to ply the task  
Her cup of bliss to fill.

I want the voice of honest praise  
To follow me behind,  
And to be thought in future days  
The friend of human-kind,  
That after ages, as they rise,  
Exulting may proclaim  
In choral union to the skies  
Their blessings on my name.

These are the *Wants* of mortal *Man*—  
 I cannot want them long,  
 For life itself is but a span,  
 And earthly bliss—a song.  
 My last great *Want*—absorbing all—  
 Is, when beneath the sod,  
 And summoned to my final call,  
 The *Mercy of my God.*”  
 —*Washington, D. C., Aug. 31, 1841.*

These nine verses are said to have been written in as many young girl's albums, by Adams, when 74 years old, and serving in the House of Representatives.—*The Author.*

“This hand, to tyrants ever sworn the foe,  
 For Freedom only deals the deadly blow;  
 Then sheathes in calm repose the vengeful blade,  
 For gentle peace in Freedom's hallowed shade.”  
 —*Written in an album in 1842.*

### TILT WITH STEPHEN A. DOUGLAS

MR. ADAMS: “I never said that our title was good to the Rio del Norte, from the mouth to its source.”

MR. DOUGLAS: “I know nothing of the gentleman's mental reservations. If he means, by his denial, to place the whole emphasis on the qualifications that he did not claim that river as the boundary ‘*from its mouth to its source*,’ I shall not dispute with him on that point. But if he wishes to be understood as denying that he ever claimed the Rio del Norte, in general terms, as our boundary under the Louisiana treaty, I can furnish him with an official document, over his own signature, which he will find very difficult to explain. I allude to his famous dispatch as Secretary of State in 1819, to Don Onis, the Spanish minister. I am not certain that I can prove his handwriting, for the copy I have in my possession I find printed in the American State Papers, published by order of Congress. In that paper he not only claimed the Rio del Norte as our boundary, but he demonstrated the validity of the claim by a train of facts and arguments which rivet conviction on every impartial mind, and defy refutation.”

MR. ADAMS: “I wrote that dispatch as Secretary of State, and endeavored to make out the best case I could for my own country, as it was my duty; but I utterly deny that I claimed the Rio del Norte as our boundary in its full extent. I only claimed it a short distance up the river, and then diverged northward some distance from the stream.”

MR. DOUGLAS: “Will the gentleman specify the point at which his line left the river?”

MR. ADAMS: “I never designated the point.”

MR. DOUGLAS: “Was it above Matamoras?”

MR. ADAMS: “I never specified any particular place.”

MR. DOUGLAS: “I am well aware that the gentleman never specified any point of departure for the northward line, which, he now informs us, was to run a part of the way on the east side of that river; for he claimed the river as the boundary in general terms, without any qualification. But his present admission is sufficient for my purposes, if he will only specify the point from which he then understood or now understands that the line was to have diverged from the river. I have heard of this line before, and know with reasonable certainty its point of departure. It followed the river to a place near the highlands, certainly more than 100 miles above Matamoras; consequently, if we adopt that line as our present boundary, it will give up Point Isabel and General Taylor's camp opposite Matamoras, and every inch of ground upon which an



American soldier has ever placed his foot since the annexation of Texas to the Union. Hence my solicitude to extract an answer from the venerable gentlemen (then 72, two years before his death) to my interrogatory whether his line followed the river any distance above Matamoras, and hence, I apprehend, the cause of my failure to procure a response to that question. If he had responded to my inquiry, his answer would have furnished a triumphant refutation to all the charges which he and his friends have made against the President for ordering the army of occupation to its present position. I am not to be diverted from the real point in controversy by a discussion of the question whether the Rio del Norte was the boundary to its source. My present object is to repel the calumnies which have been urged against our government, to place our country in the right and the enemy in the wrong, according to the truth and justice of the case. I have exposed these calumnies by reference to the acts and admissions of our accusers, by which they have asserted our title to the full extent that we have taken possession. I have shown that Texas always claimed the Rio del Norte as her boundary during the existence of the republic, and that Mexico on several occasions recognized it as such in the most direct and solemn manner. The President ordered the army no farther than Congress had extended our laws. In view of these facts, I leave it to the candor of every honest man whether the executive did not do his duty, and nothing but his duty, when he ordered the army to the Rio del Norte. Should he have folded his arms, and allowed our citizens to be murdered and our territory to be invaded with impunity? Have we not forborne to act, either offensively or defensively, until our forbearance is construed into cowardice, and is exciting contempt from those toward whom we have exercised our magnanimity? We have a long list of grievances, a long catalogue of wrongs to be avenged. The war has commenced; blood has been shed; our territory invaded; all by the act of the enemy."

—*Stephen A. Douglas, from debate in House of Representatives, May, 1846, on the Mexican War.*

### RUFUS CHOATE'S CHARACTERIZATION

"John Quincy Adams had an instinct for the jugular and the carotid artery, as unerring as that of any carnivorous animal."

### ADAMS' VERSATILITY

"No other American President, not even Thomas Jefferson, has equaled John Quincy Adams in literary accomplishments. His orations and public speeches will be found to stand for a tradition of painstaking, scholastic finish hardly to be found elsewhere in American orations, and certainly not among the speeches of any other President. As a result of the pains he took with them, they belong rather to literature than to politics, and it is possible that they will not be generally appreciated at their real worth for several generations still to come. If, as is sometimes alleged in such cases, they gain in literary finish at the expense of force, it is not to be forgotten that the forcible speech which, ignoring all rules, carries its point by assault, may buy immediate effect at the expense of permanent respectability. And if John Quincy Adams, who labored as Cicero did to give his addresses the greatest possible literary finish, does not rank with Cicero among orators, it is certain that respectability will always be willingly conceded him by every generation of his countrymen. At eighteen years of age, he was well posted in Roman and English history; had translated Virgil's *Æneid* Suetonius, the whole of Sallust, Tacitus, Agricola, his Germany and several books of his Annals, a great part of Horace, some of Ovid, and



some of Caesar's Commentaries, besides a number of Tully's orations. In Greek his progress has not been equal, yet he studied morsels of Aristototele's Poetics, in Plutarch's Lives, and Lucian's Dialogues, the Choice of Hercules, in Xenophon, and went through several books of Homer's Iliad."—*1 Brewer's The Worlds Best Orations*, 64.

### STATE SOVEREIGNTY—WON'T DO

"The Revolution itself was the work of thirteen years—and had never been completed until that day, the 30th day of April, 1789. The Declaration of Independence and the Constitution of the United States, are parts of one consistent whole, founded upon one and the same theory of government, then new in practice, though not as a theory, for it had been working itself into the mind of man for many ages, and had been especially expounded in the writings of Locke, but had never before been adopted by a great nation in practice."

"There are yet, even at this day, many speculative objections to this theory. Even in our own country, there are still philosophers who deny the principles asserted in the Declaration, as self-evident truths—who deny the natural equality and inalienable rights of man—who deny that the people are the only legitimate source of power—who deny that all just powers of government are derived from the consent of the governed. Neither your time, nor perhaps the cheerful nature of this occasion, permit me here to enter upon the examination of this anti-revolutionary theory, which arrays State sovereignty against the constituent sovereignty of the people, and distorts the Constitution of the United States into a league of friendship between confederate corporations. I speak to matters of fact. There is the Declaration of Independence, and there is the Constitution of the United States—let them speak for themselves. The grossly immoral and dishonest doctrine of despotic State sovereignty, the exclusive judge of its own obligations, and responsible to no power on earth or in heaven, for the violation of them, is not there. The Declaration says, it is not in me. The Constitution says, it is not in me."—*Jubilee of the Constitution, before the N. Y.*

*Historical Society, Apr. 30, 1839.*

### THE PILGRIMS, A PROPHECY

"In thus calling your attention to some of the peculiar features in the principles, the character, and the history of our forefathers, it is as wide from my design, as I know it would be from your approbation, to adorn their memory with a chaplet plucked from the domain of others. The occasion and the day are more peculiarly devoted to them, and let it never be dishonored with a contracted and exclusive spirit. Our affections as citizens embrace the whole extent of the Union, and the names of Raleigh, Smith, Winthrop, Calvert, Penn, Oglethorpe, excite in our minds recollections equally pleasing and gratitude equally fervent with those of Carver and Bradford. Two centuries have not yet elapsed since the first European foot touched the soil which now constitutes the American Union. Two centuries more and our numbers must exceed those of Europe itself. The destinies of this empire, as they appear in prospect before us, disdain the powers of human calculation. Yet, as the original founder of the Roman state is said once to have lifted upon his shoulders the fame and fortunes of all his posterity, so let us never forget that the glory and greatness of all our descendants is in our hands. Preserve in all their purity, refine, if possible, from all their alloy, those virtues which we this day commemorate as the ornament of our forefathers. Adhere to them with infallible resolution, as to the horns of the altar; instill them with unwearied perseverance into the minds of your children; bind your souls and theirs to the national Union as the chords of life



are centered in the heart, and you shall soar with rapid and steady wing to the summit of human glory. Nearly a century ago, one of those rare minds to whom it is given to discern future greatness in its seminal principles upon contemplating the situation of this continent, pronounced, in a vein of poetic inspiration, 'Westward the star of empire takes its way.' Let us unite in ardent supplication to the Founder of nations and the Builder of worlds, that what then was prophecy may continue unfolding into history, that the dearest hopes of the human race may not be extinguished in disappointment, and that the last may prove the noblest empire of time."

—*From Oration at Plymouth, Dec. 22, 1802.*

### LAFAYETTE

"Lafayette discovered no new principle of politics or of morals. He invented nothing in science. He disclosed no new phenomenon in the laws of nature. Born and educated in the highest order of feudal nobility, under the most absolute monarchy of Europe, in possession of an affluent fortune, and master of himself and of all his capabilities, at the moment of attaining manhood, the principle of republican justice and of social equality took possession of his heart and mind, as if by inspiration from above. He devoted himself, his life, his fortune, his hereditary honors, his towering ambition, his splendid hopes, all to the cause of liberty. He came to another hemisphere to defend her. He became one of the most effective champions of our independence; but, that once achieved, he returned to his own country, and thenceforward took no part in the controversies which have divided us. In the events of our revolution, and in the forms of policy which we have adopted for the establishment and perpetuation of our freedom, Lafayette found the most perfect form of government. He wished to add nothing to it. He would gladly have abstracted nothing from it. Instead of the imaginary republic of Plato, or the Utopia of Sir Thomas Moore, he took a practical existing model, in actual operation here, and never attempted or wished more than to apply it faithfully to his own country. \* \* \*

"When the principle of hereditary dominion shall be extinguished in all the institutions of France; when government shall no longer be considered as property transmissible from sire to son, but as a trust committed for a limited time, and then to return to the people whence it came; as a burdensome duty to be discharged, and not as a reward to be abused; when a claim, any claim, to political power by inheritance shall, in the estimation of the whole French people, be held as it now is by the whole people of the North American Union—then will be the time for contemplating the character of Lafayette, not merely in the events of his life, but in the full development of his intellectual conceptions, of his fervent aspirations, of the labors and perils and sacrifices of his long and eventful career upon earth; and thenceforward, till the hour when the trumpet of the Archangel shall sound to announce that Time shall be no more, the name of Lafayette shall stand enrolled upon the annals of our race, high on the list of the pure and disinterested benefactors of mankind."—*Eulogy on Lafayette, delivered in Congress, Dec. 31, 1834.*

### THOMAS F. MARSHALL'S EXPERIENCE WITH ADAMS

"A few days after the unsuccessful effort was made in Congress in 1842, to pass a resolution of censure against Adams, for presenting a petition from citizens of Massachusetts for the dissolution of the Union, in which effort Marshall took a leading part, I happened to be seated with some Southern members of Congress at the dinner table in a Washington hotel, when Marshall came in. It seemed that Mr. Adams had said, or done something, that day which had irritated these gentlemen,



and as Mr. Marshall was taking his seat at the table, one of them exclaimed, 'Well, Marshall, the old devil has been at work again; you must take him in hand.' 'Not I,' replied Marshall, with a decisive shake of the head; 'I have been gored by that d——d old bull, and have had enough of him. If there be any more of this kind of work, it must be undertaken by somebody else. The old devil, as you call him, is a match for a score of such fellows as you and me.' "—*McCulloch's 'Men and Measures of Half Century.'* 38.

### ADAMS ON COKE'S LITTLETON

"March, 1788. I this day got through my folio of Lord Coke, which has been hanging upon me these ten weeks. It contains a vast mass of law learning, but heaped up in such an incoherent mass that I have derived very little benefit from it, indeed, I think it a very improper book to put into the hands of a student just entering upon the acquisition of the profession. \* \* \* The addition of Wood's Institutes, and more especially of Blackstone's Commentaries has been an inestimable advantage to the late students in the profession."

—(*This was when Adams was in Theophilus Parson's office*), *Adams' Diary: 'Warren's Hist. Am. Bar.'* 177.

### CONDUCTED THREE NOTED CASES

Adams appeared in 1804-5, in *Head v. Providence Ins. Co.*, 2 Cranch, 127 (U. S. Supreme Court); and in 1809, in *Hope Ins. Co. v. Boardman*, 5 Cranch (U. S. Supreme Court); and 36 years later, when 74 years of age, in *United States v. Amistad*, 15 Peters, 518 (U. S. Supreme Court). The last case involved the freedom of certain negroes, who while brought to this country illegally by slave traders, had gained mastery of the vessel and murdered the officers. Having been taken together with the vessel into an U. S. port, by an U. S. vessel, they were claimed as slaves by their alleged Spanish owners. This was in 1841. Judge Story wrote of his argument:

"The old man was full of his accustomed virility and belligerency, and spoke for four hours and twenty minutes. It was extraordinary for its power, for its bitter sarcasm, and its dealing with topics far beyond the record and points of discussion."

—*Story, in letter to his wife, Feb. 28, 1841. See also, Warren's 'Hist. Am. Bar.'* 270 and 429-30.

### THE CONSTITUTION OF U. S.

"The Constitution was extorted from the grinding necessity of a reluctant nation."—*From a lecture on 'The Power of Ideals,'* 4.

### CLAIMED SLAVERY COULD BE ABOLISHED UNDER FEDERAL WAR POWERS

In one of his speeches, in 1836, Adams claimed slavery could be abolished by the exercise of the war powers of the Federal Government. He was not technically an Abolitionist, however.

### SCHOULER'S CHARACTERIZATION

"There was something rasping and jarring in Adams' delivery, and when the old man undertook to make himself heard, as he sometimes did, above the din and confusion, he helped most to create, his voice though



apt to break, would pierce the remotest corner of the ill-constructed chamber (H. of R.) like the shrill notes of a fife. If his manner of speaking was harsh and unsympathetic, his matter when in debate was still more so. He indulged in the bitterest personalities, sarcasm, and cutting invective, exposed motives and imputed usually the most unfavorable, as his memoirs show, and in his whole course of action appeared very lightly bound to the current opinion of his time. He conciliated neither parties nor party idols. But in his courageous independence and fixedness of purpose lay the secret of his latest influence, which widened rapidly now that the rivalry of personal ambition was eliminated; for there was a sort of stubborn integrity about him, a passionate patriotism. His keen insight, too, and profound conception of coming dangers, made his guidance more powerful with his fellow-citizens than they were aware. Athletic in his studies, he dived into the depths of the subject which interested himself and the public, and brought up facts and motives. With family traditions and experience in public affairs, reaching back to the sources of our government, with systematic habits, of which the younger statesmen might despair, who were unwilling to give up the pleasures of social intercourse, Adams in his old age, knew more of his country's history than any other living American. Reading and experience made him full, journalizing made him exact."

—4 *Schouler's U. S. Hist.*, 185.

### THE RIGHT OF PETITION

"I have felt it a sacred duty to present any petition, couched in respectful language, from any citizen of the U. S., be its object what it may, be the prayer of it that in which I could concur, or that to which I was utterly opposed. I adhere to the right of petition; and let me say here that let the petition be, as the gentleman from Virginia has stated, from the negroes, prostitutes, as he supposes—for he says there is one put on this paper, and he infers that the rest are of the same description, *that* has not altered my opinion at all. Where is your law that says that the mean, the low, and the degraded, shall be deprived of the right of petition, if *their* moral character is not good? Where is the land of free men? Was the right of petition ever placed on the exclusive basis of morality and virtue? Petition is supplication—it is entreaty—it is prayer! And where is the degree of vice or immorality which shall deprive the citizen of the right to supplicate for a boon, or to pray for mercy? Where is such a law to be found? It does not belong to the most abject despotism. There is no absolute monarch on earth who is not compelled, by the constitution of his country, to receive the petitions of his people, whosoever they may be. The Sultan of Constantinople cannot walk the streets and refuse to receive petitions from the meanest and vilest in the land. This is the law even of despotism; and what does your law say? Does it say, that, before presenting a petition, you shall look into it and see whether it comes from the virtuous and the great and the mighty? No, sir, it says no such thing. The right of petition belongs to all; and so far from refusing to present a petition because it might come from those low in the estimation of the world, it would be an additional incentive, if such an incentive were wanting."



CHARLES FRANCIS ADAMS, Jr. (1835-1915),  
Massachusetts

PAST AND PRESENT

"We are told in those, our 'prentice days, of the heroism of the past and the materialism of our present, when 'who but fool would have faith in a tradesman's wares or his word,' and 'only not all, all men lied;' and yet, when, in 1853, you, Mr. President (Charles W. Eliot) the young journeyman, descended, as I, the coming apprentice, ascended those steps (to enter Harvard), 'the cobweb woven across the cannon's mouth' still shook 'its threaded tears in the wind.' Eight years later the cobweb was swept away; and though, as the names graven on the tablets at the entrance of the hall bear witness, 'many were crushed in the clash of jarring claims,' yet we, too, felt the heart of a people beat with one desire, and witnessed the sudden making of splendid names. I detract nothing from the halo of knighthood which surrounds the heads of Sidney and of Bayard; but I was the contemporary of Savage, of Lowell, and Shaw. I had read of battles and 'the imminent deadly breach;' but it was given to me to stand on the field of Gettysburg when the solid earth trembled under the assault of that Confederate Virginian column, then performing a feat of arms than which I verily believe none in a recorded warfare was ever more persistent, more deadly or more persistent, more deadly or more heroic.

"And our prophet (Carlyle) spoke to us of silent work, and he held up before us the sturdy patience of the past in sharp contrast with the garrulous self-evidence of that deteriorated present, of which we were to be a part; and yet, scarcely did we stand on the threshold of our time, when a modest English naturalist and observer broke years of silence by quietly uttering the word which relegated to the domain of fable that which, since the days of Moses, has been accepted as the foundation of religious belief. In the time of our apprenticeship we still read of the mystery of Africa in the pages of Heroditus, while the sources of the Nile were as unknown to our world as to the world of the Pharaohs; then one day a patient, long-suffering, solitary explorer emerged from the wilderness, and the secret was revealed. In our own time and before our purblind eyes, scarcely realizing what they saw or knowing enough to wonder, Livingstone eclipsed Columbus, and Darwin rewrote Genesis. The Paladin we had been told was a thing of the past; ours was the era of the commonplace; and, lo! Garibaldi burst like a rocket above the horizon, and the legends of Colchis and the crusader were eclipsed by the newspaper record of current events. The eloquent voice from Cheyne Row still echoed in our ears, lamenting the degeneracy of a time given over to idle talk and the worship of mammon, defiled by charlatans and devoid of workers; and in answer, as it were, Cavour and Lincoln and Bismarck crossed the world stage before us, and joined the immortals. We saw a dreaming adventurer, in the name of a legend, possess himself of France and of imperial power. A structure of tinsel was reared, and glittered in the midst of an age of actualities. Then all at once came the nineteenth century Nemesis, and, eclipsing the avenging deity of which we had read in our classics, drowned in blood and obliterated with iron the shams and charlatans who, our teacher had told us, were the essence and characteristic of the age."

—From address, 'Lessons of Life,' at Harvard Alumni dinner  
Cambridge, Mass., June 26, 1895.



Charles Francis Adams, Jr., was a son of Charles Francis Adams (1807-1886), who was a son of John Quincy Adams (1767-1848), and therefore, a grandson of J. Q. Adams. Was a lawyer in Boston, graduated from Harvard in 1856; was a brother of Henry Adams (1838- ), author and American historian, who wrote the 'Education of Henry Adams.'—*The Author*.

## THE GROWTH OF PRINCIPLES

"At the sea-shore you pick up a pebble, fashioned after a law of nature, in the exact form that best resists pressure, and worn as smooth as glass. It is so perfect that you take it as a keepsake. But could you know its history from the time when a rough fragment of rock fell from the overhanging cliff into the sea, to be taken possession of by the under currents, and dragged from one ocean to another, perhaps around the world, for a hundred years, until in reduced and perfect form it was cast upon the beach as you find it, you would have a fit illustration of what many principles, now in familiar use, have endured, thus tried, tortured and fashioned during the ages. We stand by the river and admire the great body of water flowing so sweetly on; could you trace it back to its source, you might find a mere rivulet, but meandering on, joined by other streams and by secret springs, and fed by the rains and dews of heaven, it gathers volume and force, makes its way through the gorges of the mountains, plows, widens and deepens its channel through the provinces, and attains its present majesty. Thus it is that our truest systems of science had small beginnings, gradual and countless contributions, and finally took their place in use, as each of you, from helpless childhood and feeble boyhood, have grown to your present strength and maturity. No such system could be born in a day. \* \* \*

"It took a long time to learn the true nature and office of governments; to discover and secure the principles commonly indicated by such terms as 'Magna Charta,' the 'Bill of Rights,' 'Habeas Corpus,' and the 'Right of trial by Jury;' to found the family ties of each member of it, so that the music of the domestic hearth might flow on without discord; the household gods so securely planted that 'Though the wind and the rain might enter, the king could not;' to educate noise into music, and music into melody; to infuse into the social code and into the law a spirit of Christian Charity, something of the benign temper of the New Testament, so that no man could be persecuted for conscience sake, so that there should be an end of human sacrifice for mere faith or opinion; the smouldering fires at the foot of the stake put out, now, thank God, as effectually as if all the waters that this night flood the rivers had been poured in upon them. It took a long time to learn that war was a foolish and cruel method of settling international differences as compared with arbitration; to learn that piracy was less profitable than a liberal commerce; that unpaid labor was not as good as well requited toil; that a splenetic old woman, falling into trances and shrieking prophecies, was a fit subject for the asylum rather to be burned as a witch. It took a long time after the art of printing had been perfected before we learned the priceless value, the sovereign dignity and usefulness of a free press.

"But these lessons have been taught and learned; taught for the most part by the prophets of our race, men living in advance of their age, and understood only by the succeeding generations. But you have the inheritance."

—*Hon. Joseph Neilson, Chief Justice of the City Court of Brooklyn, from address at Saratoga, Aug. 1, 1875.*



## FISHER AMES (1758-1808), Massachusetts

### THE LAWS OF MOSES, SHOULD BE STUDIED

"No man can be a sound lawyer who is not well read in the laws of Moses."

### GREATNESS

"The most substantial glory of a country is in its virtuous men. Its prosperity will depend on its docility to learn from their example."

### A FEEBLE GOVERNMENT

"A feeble government produces more factions than an oppressive one."

### ELOQUENCE

"No man ever did, or ever will become most truly eloquent, without being a constant reader of the Bible, and the admirer of the purity and sublimity of its language."

### PATRIOTISM

"What is patriotism? Is it narrow affection for the spot where a man was born? Are the very clods where we tread entitled to this ardent preference because they are greener? No, sir, this is not the character of the virtue, and it soars higher for its object. It is an extended self-love, mingling with all the enjoyments of life, and twisting itself with the minutest filaments of the heart. It is thus we obey the laws of society, because they are the laws of virtue. In their authority we see not the array of force and terror, but the venerable image of our country's honor. Every good citizen makes that honor his own, and cherishes it not only as precious but as sacred. He is willing to risk his life in its defense, and is conscious that he gains protection while he gives it. For what rights of a citizen will be deemed invincible when a State renounces the principles that constitutes that security? Or if this life should not be invaded, what would its enjoyments be in a country odious in the eyes of strangers and dishonored in his own? Could he look with affection and veneration to such a country as his parent? The sense of having one would die within him; he would blush for his patriotism, if he retained any, and justly, for it would be a vice. He would be a banished man in his native land. I see no exception to the respect that is paid among nations to the law of good faith. If there are cases in this enlightened period when it is violated, there are none when it is decried. It is the philosophy of politics, the religion of governments. It is observed by barbarians, that a whiff of tobacco smoke or a string of beads gives not merely binding force, but sanctity, to treaties. Even in Algiers, a truce may be bought for money, but when ratified, even Algiers is too wise, or too just, to disown and annul its obligation. Thus we see, neither the ignorance of savages, nor the principles of an association for piracy and rapine, permit a nation to despise its engagements. If sir, there could be a resurrection from the foot of the gallows, if the victims of justice could live again, collect together, and form a society, they would, however loath, soon find themselves obliged to make justice under which they fell, the fundamental law of their state. They would



perceive it their interest to make others respect, and they would, therefore, soon pay some respect themselves to the obligations of good faith."

—*Fisher Ames, from speech in House of Representatives, 1796; To Pass Laws necessary for Carrying the Treaty with Great Britain into Effect.*

Ames was a graduate of Harvard; admitted to the Bar in 1781; a member of Mass. Convention for ratifying the Federal Constitution; Member of Congress from Boston district, elected over Samuel Adams; served four terms; chosen Pres. Harvard College, 1804, but declined on account of health. He was a strong Federalist, a follower of Hamilton.

—*The Author.*

## SAMUEL DEXTER

"Dexter is very able and will be an Ajax at the bar as long as he stays. You know his aversion to reading and to the practice is avowed. His head aches on reading a few hours, and if he did not love money very well he would not pursue the law."—*Fisher Ames.*

## DEMOCRACY

"Intellectual superiority is so far from conciliating confidence that it is the very spirit of a democracy, as in France, to proscribe the aristocracy of talents. To be the favorite of an ignorant multitude, a man must descend to their level; he must desire what they desire, and detest what they do not approve; he must yield to their prejudices. Instead of enlightening their errors, he must adopt them, and must furnish the sophistry that will propagate and defend them."

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## THE LAWYER

"The school of the practicing lawyer enables him to acquire a practical acquaintance with human nature in all its multiple phases. He may learn what weakness may be pardoned; what excess of passion may be condoned. He may learn that there are in most instances two sides to every case. How apparent violations of right may be explained. How little difference there is in the great mass of human beings, and what are the secret springs of human actions which are hidden from the outside world, and he is, therefore, less disposed to form a rash judgment of human actions. It belongs to the member of the legal profession to study the rights of individuals in their various relations to each other and to the state, and to see that they are secured by a just administration of the law. To do this demands as well a thorough knowledge of the principles of jurisprudence as taught by the masters of the profession, the special enactments of legislation, and the origin of customs which have ripened into laws by the judgment of competent tribunals, not, however, by too much reading, but by much reflection and reasoning upon what the law should be in a given case, as also the relations of different members of society to each other, the various industries which become subjects of contracts, the products of human genius which in the progress of a rapid civilization have developed new industries and to what extent they have changed former conditions. In all legal controverises, in which engaged, to make a fair and honest presentation of the law and facts before the court. Above all things to avoid stirring up litigation, and when consulted by a client to counsel settlement, when deemed desirable. Under all circumstances as an officer of the court to have the courage to defend the right, however assailed, whether by the voice of the multitude, or the despotism of a single individual clothed with official power."

—*James Overton Broadhead, Mo. (1819-1898).*



## JOHN APPLETON (1804-1891), Maine

Was a member of the Supreme Court of Maine for 31 years, 21 years Chief Justice. Was a great lover and master of books. Held in the following opinion that a person is liable for killing a dog.—*The Author.*

### THE DOG

“The main question is whether a dog is a ‘domestic animal,’ for if he be, the defendant is guilty by his own admission and should be held criminally liable. A dog is the subject of ownership. Trespass will lie for an injury to him. Trover is maintainable for his conversion. Replevin will restore him to the possession of his master. He may be bought and sold. An action may be held for his price. The owner has all the remedies for the vindication of his rights of property in this animal as in any other species of personal property he may possess. He is a domestic animal. From the time of the pyramids to the present day, from the frozen pole to the torrid zone, wherever man has been there has been his dog. Cuvier has asserted that the dog was perhaps necessary for the establishment of civil society and that a little reflection will convince us that barbarous nations owe much of their civilization above the brute to the possession of the dog. He is the friend and companion of his master, accompanying him in his walks, his servant, aiding him in his hunting, the playmate of his children, an intimate of his house, protecting it against all assailants.

“It may be said that he was *ferae naturae*, but all animals, naturalists say, were originally *ferae naturae* (by nature wild), but have been reclaimed by man, as horses, sheep, cattle, but however tamed, they have never lived like the dog, become domesticated in the home under the roof and by the fireside of their master. The dog was a part of the agricultural establishment of the Romans and is treated as such. There was the *canes villatici* to guard the villa of the Roman senator, the *canes venatici* accompanying him in his hunting expeditions, and the *canes pastorales* by whom the flocks were guarded. Virgil in his ‘Georgics,’ has given direction as to their management and education. Today, in many countries they are used for draught, as in France and Holland, and everywhere regarded as possessing value, and as the subject matter of traffic.

“The language of the statute is most general, ‘any domestic animal,’ The words are not technical or words of art. They are the words of the common people and should be construed as such. Nothing would more astonish the people for whom the laws are made than to learn that a bull or a hog was a domestic animal and that a dog was not. The lexicographers define a dog as a ‘domestic animal.’ ‘A well-known domestic animal.’—Johnson’s Dictionary. ‘A well-known domestic animal of the genus *canis*.’—Worcester’s Dictionary. In Bouvier’s Law Dictionary, he is defined as a ‘well-known domestic animal.’ Otway the poet says of them—

‘They are honest creatures  
And ne’er betray their masters, never fawn  
On any they love not.’

“So, in the encyclopedias he is *canis familiaris*, and called a domestic animal; so that in the ordinary use of language, he is within the clear provisions of the statute under which this indictment was found. ‘The domestic dog has occasioned many legal disputes and the presumption of the common law of England is, that he is tame.’ (Campbell on Negligence, Sec. 27). \* \* \*



"In the present case, the Newfoundland dog, 'Rich,' of the value of one hundred dollars, was 'in the inclosure and immediate care of his master.' He was domesticated. Whether the property of the master was originally of a qualified nature or not is immaterial. The dog was under his dominion and control. While this qualified property continues, it is as much under the protection of law as any other property and every invasion of it is redressed in the same manner."

—*State v. Harriman*, 75 *Maine Reports*, 562. (*A dissenting opinion by Judge Appleton.*)

### A FATHER'S LETTER TO HIS SON

"My dearest boy:—Some thirty-five years ago I purchased these old classics which you will please accept as a birthday present. They were the beginning of what in the course of time has become a large and valuable library. You have in them the ponderous sense of Johnson, the felicitous wisdom of Bacon, the pleasant and amusing chit-chat of Walpole, the quaintness of Cowley, who dreamed that his unread and forgotten epic would bear him down to posterity with Homer and Virgil, the sweet essays of Goldsmith, the freshness of Burns, the grace of Shenstone, the scholarly stateliness of Gray, the dignified propriety of Clarendon and the tenderness and piety of Lady Russell. The collection by the lapse of time is rare. It contains nothing but what is of value and will introduce you to those, who even now are numbered among the old authors of the language.

"I would, my dear boy, that I could make you a present correspondent in magnitude and value to the love I bear you. It would be huge in its dimensions and illimitable in its costliness, but you must take the will for the deed and remember that the value in a gift is in the love of the giver and not in the richness of the thing given. You have reached the years of manhood. Henceforth, legally, I cease to have any right to control. But paternal restraint has been so light you will find it difficult to appreciate the difference from the change of relations. Now, my dear boy, the story of your life must depend on your own integrity and sound judgment. Whatever an anxious solicitude for your prosperity and honorable success can do by giving you the advice of one who has trodden the path of life before, whatever of means in my power to aid you, are at your service and the only regret I have had is that circumstances have made them so restricted. Upon yourself you must rely. Upon whom else would you? Upon whom else should you? Each generation must bear its own toils and its own burdens, plant its own fields and reap its own rewards and gather its own harvests.

"I congratulate you upon your manhood. Your youth has been unstained. May your manhood be without spot and blemish and your old age full of the honors of a well spent life. Let strict temperance, stern and unswerving integrity and energetic industry be the rules of your life and there is nothing too high or elevated for your hopeful aspirations.

"It seems hardly a day since we so gratefully greeted your birth. With equal gratitude we now greet your manhood, the cares and responsibilities of life, and its grave and stern duties are upon you and they must be met. You cannot avoid them without dishonor—you cannot neglect them without disgrace. I may in many things have erred, if so your filial love will pardon and forget. To whom much is given, of him much is required, and you must remember paternal love is exacting.

"We bid you God speed on the journey of life. Be of good cheer. Be always hopeful. Be courageous. The timid and the hesitating begin with failure and they end as they begin. Let your aim be high and elevated and your efforts correspondent thereto, and may the blessings of God and the good will and approbation of all good men and the exceed-



ing love of your father and mother always accompany you and cheer you on.

Ever your loving father,

JOHN APPLETON,

Bangor, Me.,

29th Aug., 1859."

### THE DUTIES OF A JUDGE

"The labors of the bench are continuous and increasing. The responsibilities grave. The duties onerous. The subject matters of litigation are co-extensive with the domain of the material and intellectual world. No branch of learning which may not be needed. No amount of labor which may not be required. The great end of judicial proceeding is that justice be done to parties litigant. The care of the Judge should be, to use the words of an eloquent divine, 'when he goeth up to the judgment seat, to put on righteousness as a glorious and beautiful robe and to render his tribunal a fit emblem of that eternal throne of which justice and judgment are the eternal habitation.' He should seek for the truth. He should present facts as they exist. He would be unfit for his position, if with the added experience of the bar and the bench, he could not better appreciate the force and effect of testimony and the deductions legitimately deducible therefrom than any tribunal selected by lot—composed of men of different pursuits and various callings not disciplined by habits of accurate reasoning and unaccustomed to weigh testimony or the degree of evidence to be given him; and he would be derelict of his duty if he omitted to clearly state to them the evidence and its bearings on the rights of the parties—thus aiding the jury in arriving at the truth. One side of every litigation is in the right and the other in the wrong. The Judge should so present a cause that the right and the wrong should appear. The tower of Pisa leaning, justice can hardly be promoted by affirming its perpendicularity. The less is not equal to the greater and the attempt to give the appearance of equality is but injustice."

—John Appleton, upon retiring from the Bench, in September, 1883, after 31 years a Supreme Judge of Maine.

### LIABILITY OF JUDICIAL OFFICER, ABSENCE AS DISTINGUISHED FROM EXCESS OF JURISDICTION

"A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter. Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject-matter is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, altho upon the correctness of his determination in these particulars the validity of his judgments may depend. Thus, if a probate court, invested only with authority over wills and the settlement of estates of deceased persons, should proceed to try parties for public offenses, jurisdiction over the subject of offenses being entirely wanting in the court, and this being necessarily known to its judge, his commission would afford no protection to him in the exercise of the usurped authority. But if on the other hand a judge of a criminal court, invested with general criminal jurisdiction over offenses committed within a certain district, should hold a particular act to be a public offense, which is not by the law made an offense, and proceed to the arrest and trial of a party charged with such act, or should sentence a party convicted to a greater punishment than that authorized by the law upon its proper construction, no



personal liability to civil action for such acts would attach to the judge, altho those acts would be in excess of his jurisdiction, or of the jurisdiction of the court held by him, for these are particulars for his judicial consideration, whenever his general jurisdiction over the subject-matter is invoked. Indeed, some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction, or that of the court held by him, or the manner in which the jurisdiction shall be exercised. And the same principle of exemption from liability which obtains for errors committed in the ordinary prosecution of a suit where there is jurisdiction of both subject and person, applies in cases of this kind, and for the same reasons."

—*Associate Justice Stephen J. Field, in Bradley v. Fisher, 13 Wall., 351-2.*

### THE IDEAL LAWYER

"Gentlemen of the graduating class of the Yale Law School: I commend to you the cultivation of a spirit that will enable you to take a healthy, sound, and cheerful view of government, believing that the tendency is toward improvement, not deterioration. I would wish you to realize and appreciate the humane direction in which recent reforms of jurisprudence have been progressing, and to see to it that, so far as you can aid, the spirit of mercifulness shall not be suffered to decline. The further maintenance of the high authority and repute of our Anglo-Saxon jurisprudence as the foundation of our progress and prosperity and the safeguard of our liberties is entrusted to the bar. The world will judge of the system according to the manner in which its ministers administer it. Beyond his immediate duty to his client, the lawyer has a larger and wider sphere of duty to the State, in illustrating, supporting, and maintaining the priceless value of that system of law and justice which is the heritage of the American people. As the character of the members of that profession is sound, patriotic, and pure, so will legislation, the administration of public office and general public sentiment continue upon lines of justice, safety, and conservatism.

"So I urge you not to strive exclusively for the pecuniary rewards of your profession, but to look forward to a career of influence and usefulness that shall include your neighborhood, your State, your Country, within its beneficent reach. For your example let me commend the ideal of the good lawyer—I do not say the great, but the good lawyer—an ideal that has been realized in the life of every substantial city and court, especially in the older neighborhoods; a man of kindly and benignant disposition, friendly alike with his well-to-do and his poorer fellow townsmen, acquainted with their habits and individual history, and with a pretty accurate notion of their opinions and prejudices as well as their ways and means; genial and sociable, yet dignified and self-contained; of staid and comfortable appearance; in manner alert; in conversation always moderate and respectful; shrewd in his observations, wise, but with perennial humor and love of pleasantry; as a citizen always concerned and active in the interests of his town, his state and his country; not an agitator, nor a perpetual fault-finder, nor giving out the intimation that he is better or wiser than others; but ready to confer, to adjust, to agree, to get the best possible, if not the utmost that is desirable; to him the people turn in local emergencies for guidance and counsel on their public affairs—even partisanship fearing not to trust to his honor and wisdom; so free from all cause of offense that there is no tongue to lay a word against his pure integrity—too dignified and respectful to tempt familiarity; too genial and generous to provoke envy or jealousy; revered by his brethren of the bar; helpful and kindly to the young; in manners suave and polite, with a fine courtliness of the old flavor—what Clarendon described in John Hampden as 'a flowing courtesy toward all men.' "

—*John W. Griggs, Attorney-General under Wm. McKinley, 1898-91.*



## JOHN H. ATWOOD, (Missouri)

John H. Atwood, formerly of the Atchison, Kans., Bar, now of the Kansas City, Mo., Bar, when practicing in the city of Leavenworth, was called in to defend Judge Douglass, also of Leavenworth, who had been sued by Colonel Anthony, also of Leavenworth.

When Col. Anthony brought his suit against Judge Douglass, he retained Judge Lucian Baker; but when the suit came to trial, Judge Baker was a United States Senator, in Washington, D. C. The firm in Leavenworth, was Baker, Hood and Atwood. As Atwood was the only trial lawyer, who could cope with Judge Douglass, Col. D. R. Anthony, swallowed his enmity to Atwood, and insisted upon the latter conducting the case. Atwood, who had perfect contempt for Anthony, as Col. Anthony, a rabid Republican, had abused Atwood, a rising young Democratic lawyer, Atwood took this occasion to get even with his old newspaper enemy, in the following speech:

### A PLEA FOR DOUGLASS

"May it please the Court: I congratulate myself upon the judicial frame of mind in which I am enabled to approach a consideration of this case. For my perfected appreciation of the many virtues that Judge Douglass possesses and Col. Anthony's failure to appreciate any of mine, leaves me in a state delightfully impartial. Ordinarily, a lawyer's zeal for his client's cause outruns his judgment, but when that client has knocked out the bung from the hogshead of his wrath and deluged him with its contents until he wades up to his middle in troubled waters, a situation is presented that tends to neutralize the lawyer's zeal until it is reduced to a judicial calmness that is without bias; and I am able to undertake a discussion of this case without prejudice, passion or any feeling.

"The one thing that is wrong about this case is that your Honor cannot find against both parties to this suit. From the standpoint of personal merit neither of them ought to win. Neither of them came into court with clean hands, and I have doubts about their feet. But Anthony has paid the taxes for many years on the property, and in so doing has contributed to the revenue of the State and County. This is playing the part of the good citizen, a part that is new to him and sets awkwardly upon him, and one that startles the community with its novelty. But since he is playing this part he ought to be encouraged in it by being permitted to win this suit. When you find one doing right for the first time in his life, the thought of discouraging him revolts the judicial conscience.

"It is said that Anthony stole horses in Missouri, I reply that Douglass has stolen homesteads in Kansas. It is said that Anthony has been a detriment to the community, I reply that Douglass has never paid a debt he owed in the community. If it is said that Anthony has been sued often, I reply that Douglass has sued others twice as often.

"I will admit, your Honor, that it is a choice of evils; one of the evils has a hooked nose, and the other has a peg-leg, but the hooked nose pays his taxes and the peg-leg doesn't, and that is where my side has the best of it. If you feel inclined to decide this case in favor of my opponent because of the delightful sentiments that cluster around his name, and through your mind should float the beautiful strain of 'Douglass, tender and true,' I ask you to remember that my client claims a saint among his ancestors. I will admit that the claim never has been allowed, but we make it all the same.



"Your Honor may think they are two old devils together, but I submit we are not responsible for the age of Judge Douglass' iniquities. To be sure the great age of my client is an evidence that they 'whom the Gods love die young,' but that does not alter the fact that he, and he alone, of these men, has paid his taxes.

"So, I ask your Honor, to overlook the fact that my client has usually been wrong, and remember that now, for once in his life, he is right. Let his wickedness hide itself in a measure behind the wickedness of Douglass. I can see that your Honor is itching to hit them both, and ordinarily you could not hit them a lick amiss, but I pray your Honor to remember that you can't beat them both, much as they deserve it, and since you must give the case to one of them, I ask your Honor to shut your eyes and give it to Anthony."

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## DUTY AND IMPORTANCE OF THE LAW

"He who aspires to a thorough acquaintance with legal science, should cultivate the most enlarged ideas of its transcendent dignity, its vital importance, its boundless extent and infinite variety. As it relates to the conduct of man, it is a moral science of great sublimity; as its object is individual and national happiness, it is, of all others, the most important; as it respects the moral actions of men, and of nations, it is infinitely varied; and as it concerns all his rights and obligations, either derived from, or due to his God, his neighbor, his country, or himself, it must necessarily be a science of vast extent. To an elevated and dignified view of this august science, cultivated and fostered, perhaps, through a whole life, we may attribute the astonishing progress made in it by a few; whilst, on the other hand, those who have attained even a sciolous knowledge, have accorded to it the homage of their profoundest respect, and considered it, as of all others, the most noble.

"Those among the ancients and moderns, who have paid a tribute of respect to this science, appear to have been at a loss to find in the language of eulogy and eloquence terms sufficiently expressive of their great admiration. Hence, the enthusiasm of Hooker vented itself in the following sublime strain, 'Of Law no less can be said, than that her seat is the bosom of God, her voice the harmony of the world; all things in heaven and earth do her homage, the very least as feeling her care, and the greatest as not exempted from her power; both angels and men, and the creatures of what condition soever, though each in different sort and manner, yet all with uniform consent, admiring her as the mother of their peace.'"—*David Hoffman's 'Legal Study.' Proem*

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## NEGOTIABLE PAPER

"Fortunes, vaster in amount than the dowries of monarchs, are daily committed, in our commercial cities, to the keeping of these frail, but precious fabrics known as negotiable papers. With good faith crowned as their patron goddess, and fortune as their ward, they attract to their consideration and protection, not only the hunters of wealth, but as well the good who cherish sentiments of integrity, and the learned and great who expound the principles by which it shall be jealously guarded and maintained. \* \* \* The pioneer who stood on the borders of our western civilization thirty years ago, and who today sees the same landscape, then covered with primeval forests or stretching wide in solitary prairies, and teeming with the industries of crowded millions, recognizes a change not more marked than that which has been exhibited in the rapid and diversified development of negotiable instruments."—*John W. Daniel, from his treatise, 'Negotiable Instruments.'*



## FRANCIS BACON (1561-1626), England

### THOUGHTS FROM BACON

"The greatest trust between man and man is the trust of counsel."

#### THE AGED

"Men of age object too much, consult too long, adventure too little, repent too soon, and seldom drive business home to the full period, but content themselves with a mediocrity of success."

#### APOTHEMS

"Nor do apothems only serve for ornament and delight, but also for action and civil use, as being the edge tools of speech, which cut and penetrate the knots of business and affairs."

#### PRAISE FROM COMMON PEOPLE

"Praise from the common people is generally false, and rather follows the vain than the virtuous."

#### HOUSES ARE FOR USE

"Houses are built to live in, more than to look on; therefore, let use be preferred before uniformity, except where both may be had."

#### BEST ARMOR

"The best armor is to keep out of gunshot."

#### ATHEISM

"Atheism is rather in the life than in the heart of man. \* \* \* God never wrought miracles to convince atheism, because His ordinary works convince it."

#### BASHFULNESS

"Bashfulness is a great hindrance to a man, both in uttering his sentiments and in understanding what is proposed to him; it is therefore good to press forward with discretion, both in discourse and company of the better sort."

#### THE BIBLE

"There never was found, in any age of the world, either religion or law that did so highly exalt the public good as the Bible."

#### BOASTING

"The less you speak of your greatness, the more shall I think of it."—Bacon said to Sir Edward Coke, when the latter was boasting.

#### BOOKS

"Some books are to be tasted; others swallowed; and some few to be chewed and digested."



## CHANGE

"He that will not apply new remedies must expect new evils."

## FREE-MINDED AND CHEERFUL

"To be free-minded and cheerfully disposed at hours of meals, and of sleep, and of exercise, is one of the best precepts of long-lasting."

## CHILDREN

"Children sweeten labors, but they make misfortunes more bitter. They increase the cares of life, but they mitigate the remembrance of death."

## CHRISTIANITY

"There never was found in any age of the world, either philosophy, or sect, or religion, or law, or discipline, which did so highly exalt the good of the community, and increase private and particular good as the holy Christian faith. Hence, it clearly appears that it was one and the same God that gave the Christian law to men, who gave the laws of nature to the creatures."

## CLEANLINESS

"Cleanliness of body was never esteemed to proceed from a due reverence to God."

## COMPANIONSHIP

"It is good discretion not to make too much of any man at the first, because one cannot hold out in that proportion."

## MONEY

"If money be not thy servant, it will be thy master. The covetous man cannot so properly be said to possess wealth, as that may be said to possess him."

## CUNNING

"We take cunning for a sinister or crooked wisdom, and certainly there is a great difference between a cunning man and a wise man, not only in point of honesty, but in point of ability."

## CUSTOM

"Men commonly think according to their inclinations, speak according to their learning and imbibed opinions, but generally act according to custom."

## DEATH

"It is as natural to a man to die, as to be born; and to a little infant, perhaps the one is as painful as the other."

## DISCRETION

"Discretion in speech is more than eloquence."

## DISPATCH

"Measure not dispatch by the times of sitting, but by the advancement of business."

## DOUBT

"In contemplation, if a man begins with certainties he shall end in doubts; but if he be content to begin with doubts, he shall end in certainties."

## DRUNKENNESS

"All the armies on earth do not destroy so many of the human race, nor alienate so much property, as drunkenness."

## DUTY

"When the soul resolves to perform every duty, immediately it is conscious of the presence of God."

## ECONOMY

"A Man's ordinary expenses ought to be but to the half of his receipts, and if he think to wax rich, but to the third part."

## ENVY

"A man that hath no virtue in himself ever envieth virtue in others; for men's minds will either feed upon their own good, or upon other's evil; and who wanteth the one will prey upon the other; and who so is out of hope to attain to another's virtue will seek to come at even hand by depressing another's virtue."

## EXCESS

"The desire of power in excess caused angels to fall; the desire of knowledge in excess caused man to fall; but in charity is no excess, neither can man or angels come into danger by it."

## EXPENSE

"Riches are for spending, and spending for honor and good actions; therefore extraordinary expense must be limited by the worth of the occasion."

## FACE

"A beautiful face is a silent commendation."

## FAME

"Good fame is like fire; when you have kindled you may easily preserve it; but if you extinguish it, you will not easily kindle it again."

## FLATTERY

"It has been well said that the arch-flatterer with whom all petty flatterers have intelligence, is a man's self."

## GOODNESS

"Of all virtues and dignities of the mind, goodness is the greatest, being the character of the Deity; and without it, man is a busy, mischievous, wretched thing."



## GRACE

"A graceful and pleasing figure is a perpetual letter of recommendation."

## HABIT

"Habit, is wisely and skilfully formed, becomes truly second nature; but unskilfully and unmethodically directed, it will be as it were the ape of nature, which imitates nothing to the life, but only clumsily and awkwardly."

## HISTORY

"Out of monuments, names, words, proverbs, traditions, private records, and evidences, fragments of stories, passages of books, and the like, we do save and recover somewhat from the doings of time."

## HOPE

"Hope is the most beneficial of all the affections, and doth much to prolongation of life, if it be not too often frustrated; but entertaineth the fancy with expectation of good."

## HYPROCRISY

"A bad man is worse when he pretends to be a saint."

## IDLENESS

"Much bending breaks the bow; much unbending the mind."

## IMPATIENCE

"Whoever is out of patience is out of possession of his soul. Men must not turn bees, and kill themselves in stinging others."

## INACTIVITY

"Learning teaches how to carry things in suspense without prejudice 'till you resolve."

## INSTINCT

"Who taught the parrot his 'Welcome?' Who taught the raven in a drought to throw pebbles into a hollow tree where she espied water, that the water might rise so as she might come to it? Who taught the bee to sail through such a vast sea of air, and to find the way from a flower in a field to her hive? Who taught the ant to bite every grain of corn that she burieth in her hill, lest it should take root and grow?"

## JESTING

"As for jesting, there be certain things which ought to be privileged from it, viz., religion, matters of state, great persons, and business of importance, and any case that deserveth pity."

## JUDGES

"Judges ought to be more learned than witty, more reverent than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue."

## KNOWLEDGE

"Knowledge is not a couch whereon to rest a searching and restless spirit; or a terrace for a wandering mind to walk up and down with a fair prospect; or a tower of state for a proud mind to raise itself upon; or a sort of commanding ground for strife and contention; or a shop for profit and sale; but a rich storehouse for the glory of the Creator, and the relief of man's estate."

## LIBRARIES

"Libraries are the shrines where all the relics of saints, full of true virtue, and that without delusion or imposture, are preserved and reposed."

## MARRIAGE

"He that hath wife and children, hath given hostages to fortune; for they are impediments to great enterprises, either of virtue or mischief. Certainly wife and children are a kind of discipline of humanity."

## MODERATION

"I know a wise man who had for a byword, when he saw men hasten to a conclusion, 'stay a little that we may come to the end sooner.'"

## MONEY

"Money is like manure, of very little use except it be spread."

## POLITENESS

"The wise are polite all the world over; fools are polite only at home."

## PROSPERITY

"The virtue of prosperity is temperance, but the virtue of adversity is fortitude; and the last is the more sublime attainment."

## PROVERBS

"The genius, wit, and spirit of a nation are discovered in its proverbs."

## READING

"Reading serves for delight, for ornament, for ability. The crafty condemn it; the simple admire it; the wise use it."

## READING

"Reading maketh a full man; conference a ready man; and writing an exact man; and, therefore, if a man write little, he had need have a good memory; if he confer little, he need have a present wit; and if he read little, he had need have much cunning, to seem to know that he doth not."

## REVENGE

"By taking revenge, a man is but even with his enemy; but in passing over it, he is superior."

## RICHES

"I cannot call riches by a better name than the 'baggage' of virtue; the Roman word is better, '*impediment*.' For as the baggage is to an army, so are riches to virtue. It cannot be spared or left behind, and yet



it hindereth the march; yea, and the care of it sometimes loseth or disturbeth the victory. Of great riches there is no real use, except in the distribution; the rest is but conceit."

### THOUGHT

"A man would do well to carry a pencil in his pocket, and write down the thoughts of the moment. Those that come unsought for are commonly the most valuable, and should be secured, because they seldom return."

### VANITY

"It was prettily devised of Aesop that the fly sat upon the axletree of the chariot-wheel, and said, 'What a dust do I raise!' So are there some vain persons that, whatsoever goeth alone or moveth upon greater means, if they have never so little hand in it, they think it is they that carry it."

Bacon, was born three years before Shakespeare, and lived ten years longer; born twelve years after Coke, and died eight years before; and born twenty-three years before Selden, and died twenty-eight years before Selden departed; but these three great lawyers were contemporaries (as Shakespeare knew almost as much of the theory of the law, as did Coke and Bacon of its practice.) The great lawyer and philosopher, Thomas Hobbes, and the poet and dramatist, Ben Jonson, were of that period.

Lord Campbell says of Bacon, who died in the sixty-sixth year of his age, "He was not merely the most distinguished man who ever held the Great Seal of England, but notwithstanding all his faults, one of the greatest ornaments and benefactors of the human race." Says Johnson in his *Life of Coke*: "The two finest prose essays in the English language, are Lord Bacon's 'Essay on the Advancement of Learning,' and Milton's tract on 'The Freedom of the Press.'" Charlton T. Lewis, in the 'Library of the World's Best Literature,' says: "If the two greatest names in the history of the common law were to be selected by the suffrage of the profession, the great majority would be cast for Coke and Bacon. As a master of the intricacies of precedent and an authority upon the detailed formulas of 'the perfection of reason,' Coke is unrivalled still; but in the comprehensive grasp of the law as a system for the maintenance of social order and the protection of individual rights, Bacon rose far above him."

Bacon's annual income as Attorney-General under James, outside of his office, was over \$30,000. Says David Hume: "As a public speaker, a man of business, a wit, a courtier, a companion, and author, a philosopher; he is justly the object of great admiration." And this notwithstanding, called by Pope, "the wisest, the brightest, the meanest of mankind," and that he was convicted of bribery by Parliament, and sentenced to pay a fine of \$200,000, and was actually sent to the Tower, but pardoned by the King; though he lived but five years after his disgrace. Yet, while Lord Chancellor, not one of the seven thousand cases which he decided has been reversed.—*The Author*.

(See *Bacon and Coke compared*, under article, *William T. Hughes*.)



## ROGER SHERMAN BALDWIN (1793-1863), Connecticut

Chief Justice of Conn.; Professor of Law in Yale University; ex-president of the American Bar Ass'n.

### THE STATE OF CONNECTICUT

"The Senator from Virginia has thought proper to refer disparagingly, to the conduct of the State of Connecticut in reserving from her cession a portion of her public domain. I can inform that senator, sir, that Connecticut, small as she is in territory, small as she was in population when compared with the State of Virginia, had more troops in the field than the great State of Virginia. This was stated by Chief-Justice Ellsworth, one of the delegates from Connecticut in the convention which formed the constitution of the U. S.; and no delegate from Virginia—though Mr. Madison was present and participated in the debate ventured to deny it. And yet the senator from Virginia says he looks almost with indignation upon the State of Connecticut, because one of her senators, in the performance of a duty imposed upon him as a member of one of the committees of this body, has thought proper to rebuke the frauds which have been committed by individuals in the State, which that senator has the honor to represent. Sir, Virginia, is a noble State; I impute nothing dishonorable to her. But inasmuch as I have deemed it my duty to rebuke those frauds, the senator alludes in terms of disparagement to the State which gave me birth, and which I have the honor to represent, because with all her revolutionary claims she thought proper, in ceding her western domain, to reserve a comparatively small portion of it for the purposes of popular education. Sir, this reservation was not made for any mere private objects; it was not made to aid her in the discharge of her revolutionary responsibilities, or the payment of her civil-list expenditures, but for the noble purpose of providing for the education of every child within her limits, and of peopling as well the magnificent territory which she ceded as that which she reserved, with an educated, enlightened, and enterprising population.

"It was by this reservation that she laid the foundation of that magnificent school-fund which enabled those who took the census in 1840 to return that they found in the whole State of Connecticut but five hundred and twenty-six persons of adult age who were not able to read and write; and these are believed to have been chiefly foreigners. Can the senator from Virginia say as much for his State, and appeal to the returns of the census to confirm him?

"But, sir, it seems that the State of Virginia, in order to induce her citizens to share in the perils and glories of the revolution, was obliged to offer the enormous bounties, which I have already stated to the Senate. Sir, the citizens of Connecticut rushed at once to the combat. They were at Ticonderoga, sir. Yes, sir, they were there with Ethan Allen and his Green mountain boys—himself a native of Connecticut, at their head—on an expedition planned in Connecticut, and supplied from its public treasury, before the Continental Congress of 1775 and assembled—capturing the important fortress, almost before the blood had grown cold that was shed at Concord and at Lexington. They were at Bunker's Hill with Putnam, and Knowlton, and Grosvenor, and their brave compatriots, who needed no bounty to induce them to engage in the service of their country. I need not dwell on the Revolutionary history of my State. It is known to all who hear me. Was it too much, then, I ask, when the State of Virginia, with fewer troops in the field than Connecticut, thought proper to reserve nine million acres of land in what is now the State of Kentucky, and three million, seven hundred thousand more in Ohio, in the cession of her claims to the Northwestern Territory,



that the State of Connecticut should reserve three million acres of her territory for the free education of her children? The descendants of her sons who had bravely fought and many of whom had fallen, on the battle-fields of the Revolution, in the service of their country—a service in which they had engaged without any such inducements to stimulate their patriotism as were offered by Virginia to her sons? Was it too much for them to ask? And is it for Virginia to cast reproach for this? No, Sir! No, Sir!

“Sir, I do not propose at this time to go into the question of the title to this Northwestern Territory, which she professes to have ceded to the government of the U. S. If time permitted, sir, I could show that, while the State of Connecticut had a title to the lands which she reserved, the title of Virginia to the territory which she ceded was at least a doubtful one. And for all the services which are claimed to have been rendered in conquering that territory from the enemy, they have received a liberal reward from the government and been quartered on the public treasury.”

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### DISTINCT POWERS CONFERRED ON CO-ORDINATE BRANCHES OF GOVERNMENT

“It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether State or national, are divided into three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall, by the law of its creation, be limited to the exercise of the powers appropriate to its own department and no other. To these general propositions there are in the Constitution of the U. S. some important exceptions. One of these is, that the President is so far made a part of the legislative power, that his assent is required to the enactment of all statutes and resolutions of Congress.

“This, however, is so only to a limited extent, for a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds of each House of Congress. So, also, the Senate is made a partaker in the functions of appointing officers and making treaties, which are supposed to be properly executive, by requiring its consent to the appointment of such officers and the ratification of treaties. The Senate also exercises the judicial power of trying impeachments, and the House of preferring articles of impeachment.

“In the main, however, that instrument, the model on which are constructed the fundamental laws of the States, has blocked out with singular precision, and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and the judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments cannot be exercised by another.”

—*Kilbourn v. Thompson*, 103 U. S., 190., by Associate Justice Samuel F. Miller.



SIMEON E. BALDWIN (1840- ), Connecticut

### COLLEGES

"But college, at best, can give us but a small part of an education. It is only the preface of the book, which she translates for us."

—*Educational Citizenship*, 5.

### THE SWEETEST THING IN LIFE

"The sweetest thing in life, outside the gifts of home, is to have power and to feel that you are exercising it well."—*Idem*, 25.

### LOVE versus KNOWLEDGE

"It has been said that what a boy loves, when he leaves school, is worth more to him, and the nation, than what he knows."

### BIOGRAPHY

"Carlyle says the history of the world is 'the biography of great men.' The student of large social movements will be more apt to declare it to be the story of the average man and the average level of the community, in every generation. Certainly it is so in a country such as ours. This is a natural consequence of republican institutions."—*Idem*, 77.

### THE ABSOLUTISM OF THE COURTS

"Public officers in America act under a peculiar responsibility by reason of the universal absolutism of the courts. In no other country does the judiciary hold as important a place as in the United States, because here they have, and under the protection of our institutions dare to exercise, the immense power of declaring statutes unconstitutional, and, therefore void. The prerogative belongs equally to the judges of the States and the United States. Any State judge, from the highest to the lowest, can declare an Act of Congress unconstitutional, and refuse to enforce it, in the same manner he could deal with a statute of the State, though subject to ultimate review by the Supreme Court of the United States."

—*Idem*, 100-1.

### ENLARGEMENT OF GOVERNMENTAL POWER

"The nature of political science has largely changed and broadened out during the last half century. Its aim formerly was to show how to fit the government of a people to the conditions of that people. It was something of local application. What it had of general principles was only important in determining the mode of such application. Then came the ocean cable, to bind the world together in point of time. The opening of Africa followed, and the formation of the Congo Free State. Europe pushed beyond the fringe of civilization which in ten thousand years had hardly spread beyond the coast line, and marked off her new spheres of influence. England seized upon ancient Egypt. France laid her hands upon Algiers, Tunis, and then Morocco, to be followed by Italy, reaching after Tripoli. Russia meanwhile has been creeping into China and Persia. Japan has entered the family of nations, and now holds her place among the great powers. The United States buy Alaska; construct an isthmian canal to connect the Atlantic and Pacific; assume a protectorate over Cuba; reach into Asia, and seize the Philippines. China Persia and Turkey accept republican institutions."—*Idem*, 96-7.



## JUDGE BALDWIN—DEFENDING A DOUBTFUL CASE

"A lawyer may well undertake a doubtful cause, but never can he righteously advocate what he knows is not law, nor can he counsel or assist in the evasion or disregard of law. It is one thing to secure for a client his rights concerning a past transaction, to insist that his guilt be legally proven, to claim in his behalf all that to which he is by law entitled. It is another thing to counsel and assist concerning a future course of action which either evades or disregards the law. \* \* \* The protection of law, like the showers from the heavens, descends upon the just and the unjust alike. Who, indeed, is to determine the guilt or innocence of one prosecuted for crime? These are necessary functions of judges and juries, rather than lawyers."—*Judge Baldwin, 'The Young Man and The Law,' p. 80-1.*

## THE POWER OF RELIGION

" 'Herbert Spencer,' says Frederic Harrison, 'looked to the unknowable environment behind the world of sense and knowledge as the sphere and object of religion,' and the world stands nearer to Spencer than any other scientist, that the only intelligible sphere of religion must be the knowable. The world disdains the thought that the knowable is immutably measured by any form of human experience. The world, in general, rejects it. It is unscientific. Who would have said a century ago that a voice of a friend speaking in Denver could be heard in New York, and recognized in every intonation as easily as if he were in the same room with him who is addressed? Who would have said twenty years ago that a ray of light could be so framed and directed as to light up the interior of the human body and show the skeleton within it? Who would have said ten years ago that there was a heat-producing mineral that never cooled? What canons of scientific experience brought within the range of probable assumption marvels like these? Surely it is but reasonable to expect that the common people will look at each new discovery of such a kind as fresh proof of an intelligent creator, and another step nearer to knowledge of what He is.

"The full power of such a belief is seldom felt by those who are themselves unaffected by it. For this cause, if for no other, the historian whose judgments will be accepted by future generations must write in a religious spirit. He cannot use a key too large for him to grasp. I mean here by religion a reverent consciousness of a power (be it a law or a spirit) manifest in nature, which is stronger than man and a sense of obligation to answer its demands. Its common fruits, ripened by human association, have through all historic times been what in those times passed for collective virtue and self-sacrifice. The historian must respect these qualities. He must share in them, so far at least as to recognize them in others, and recognize their controlling force."

Simeon E. Baldwin was President American Bar Ass'n.; professor of Constitutional Law, Yale University; and late President American Historical Ass'n.

—From lecture, 'The Power of Religion,' in 'The Meaning of Modern Life,' (40 lectures).



## ICHABOD BARTLETT (1786-1853), New Hampshire

### AN INTERESTED EXECUTOR

"The testator was a feeble and solitary female in the eve of life; the defendant was her religious teacher, the pastor of her church, writing an instrument making himself residuary legatee and executor of her estate, and with every possible inducement of interest not to create a legacy out of himself, contrary to her intention. Notwithstanding the clerical character of this executor, and the singleness of view with which he may have been supposed to have devoted himself to the spiritual concerns of his flock, the history of the ingenious stratagems with which the gentleman of his cloth evaded all the skill and care of Parliament, from the 7th of Edward I to the 9th of George II, shows that they are not always indifferent to their temporal interests. \* \* \* The testator desires to be decently buried in the churchyard of St. John's church *at the discretion* of the executor. Now, apply to this period the construction contended for by the defendant, and let him have been averse from expending, as paying over the property to legal claimants, and the testator's chance for burial would have been much more problematical than the good woman would ever have suspected."

—*Ichabod Bartlett, who was against Jeremiah Mason, Judge Jeremiah Smith and Daniel Webster, in the Dartmouth College case, in N. H. Courts.*

### BARTLETT'S TILT WITH HENRY CLAY

"I have been seriously advised by the Honorable Speaker (Clay). I ought doubtless to receive the advice with due deference; yet, however, criminal it might be, I feel inclined to say to him: 'I thank you for your advice; more forasmuch as it was entirely gratuitous and uncalled for; but however inexperienced I may be, or however young, when I feel any need of lessons on the subject of political integrity, I feel myself of age to select my instructor. \* \* \* Gentlemen were asked if they dare go home to their constituents, after voting against the resolution, or against the opinion of that honorable gentleman. I would not attempt to determine that. Where I shall go when I leave this House, I may not be able to say, but if not to my constituents, I certainly shall not go to the Grand Signor, for I would make a bad slave, either at Constantinople or in this House. However obscure I may be, I have no constituents so humble as not to know that I dare do all my duty.'

### BARTLETT'S PLEA IN A FRAUD CASE

In *Bell and Tuck v. Dow*, two distinguished lawyers of the Rockingham, N. H., Bar, had bought a horse of a farmer at Hampton, for \$30. They managed to get the steed as far as Exeter, where they lived, a distance of about ten miles; but the animal proved too weak to stand up to get his oats, and soon collapsed, a total loss. The irate purchasers brought suit against the farmer for fraud in the sale. Bartlett was retained for the defense. He began his argument somewhat in this fashion:

"Gentlemen of the Jury, before we consider the testimony that bears on the circumstances of this sale, let us for a moment see who are the parties to this suit. Whom have we here as plaintiffs? Two able, astute lawyers. Who is here as defendant? A plain farmer. One of these plaintiffs, gentlemen, is James Bell! A lawyer of talent and experience, a gentleman of such shrewdness, that when the rich corporations of Massachusetts were hunting all over the State of New Hampshire, for the



right kind of an attorney to protect their enormously valuable interests, at Lake Winnepesaukee, they selected *him*. Amos Tuck, another lawyer, gentlemen, of such marked success and distinction at the bar, that the people of this district have just chosen him to represent them in Congress. These two, keen-witted men, as if not content to trust their own sagacity and skill, proceeded to call in a third party to help them. They selected none other than Stephen W. Dearborn, gentlemen, the High Sheriff of this county, who is sitting in yonder box, a man known all this region roundabout as the sharpest horse-jockey to be found anywhere. And now, gentlemen, with this combination brought to bear on the subject, you are seriously asked to believe that they were cheated in a horse-trade, by my poor, simple, old client!"

—*From Frank W. Hackett's article in Vol. 6 Green Bag, 105 (1894), on Ichabod Bartlett.*

### OF REVOLUTIONARY STOCK

Bartlett was of revolutionary stock. He and Webster were from the same town, and theirs were the two leading families in it. He was a 'little giant,' four years younger than Webster; served three terms in Congress; was from a family eminent for physicians, preachers and jurists; he was indefatigable in preparation; eloquent in its highest sense; ready, witty and a popular idol. He was often pitted against Jeremiah Mason, and other great lawyers. Between Webster and Bartlett there existed a personal and political antipathy, which continued for years. This cropped out in the argument of the Dartmouth case, at Exeter, N.H., and is very apparent from Mr. Webster's correspondence. At the September term, 1817, the counsel for the College met at Exeter, thoroughly prepared for the argument.—*Shirley's 'College Causes,' 154.*

### DESCRIPTION OF BARTLETT

Ichabod Bartlett measured his strength with such men as Jeremiah Mason, Daniel Webster, George Sullivan and Jeremiah Smith. In the art of gaining verdicts, Mr. Bartlett was confessedly the equal of any one of these eminent lawyers. They, together with others less formidable as opponents in the trial of causes, secured an eminence that Rockingham County (with its shire towns of Portsmouth and Exeter), at the period mentioned, did possess a Bar of extraordinary degree of ability.

Webster once said that he had practiced law, commencing before Justice Jackman, in Boscawen, who received his commission from George II, all the way up to the court of John Marshall, in Washington, and he had never found any place where the law was administered with so much precision and exactness as in the County of Rockingham.

Bartlett was born July 24, 1786, at Salsbury, N. H., a small town on the Merrimac, 16 miles north of Concord, noted as the birthplace of Ezekiel and Daniel Webster. He was the sixth in a family of nine, of Dr. Jos. and Hannah Bartlett; and the sixth in descent from Richard Bartlett, who in 1633 was a passenger from England, in the "Mary and John," and who not long after, settled in Newbury, Mass. Dr. Jos. Bartlett was the first physician who practiced in the town, having settled in Salsbury in 1771, at the age of twenty. Ichabod Bartlett entered Dartmouth, in 1804, at eighteen years of age; taught school at the academy in his native town, during the winter vacation; while a senior, delivered a Fourth of July oration at Salsbury, which was printed in pamphlet form; upon graduation, entered the law-office of Moses Eastman, and later that of Parker Noyes, both graduates of Dartmouth; admitted to the local bar in 1811, and to the Supreme Court, 1813, on motion of John P. Hale. In 1819, was chosen Solicitor of Rockingham County.



He was gifted with a remarkable fluency, bright and quick upon his feet, and a most captivating manner with an audience; no young man at that day, gained wider popularity as a public speaker. Love of law and success at the bar, however, did not prevent his coming forward rapidly into political station. \* \* \* His practice extended before long to all parts of the State. In 1822, while he was arguing to a jury at Gilman-town, W. H. Y. Hackett, afterwards a leading lawyer at Portsmouth, was induced to study law, and was so impressed by Bartlett's wonderful ability, that he entered his office. Other lawyers retained him to argue their cases. Indeed, he enjoyed much the same prestige that Webster did. He was alert, adroit and daring; thoroughly prepared, and knew just what he purposed to do. His tactics were to worry and "nag" Mason. One of Mr. Mason's admirers (when a student at the Academy) used to see the two pitted against each other at Exeter, said:

"Bartlett was a man of wonderful adroitness in the management of a case, quick as a flash of lightning in the movements of his mind, whether to inflict or parry a blow. At first it seemed he was the keenest and most brilliant of them all; but before getting through a case, in which he and Mason were engaged, it was plain enough that he was obliged to put forth all his strength to sustain himself against an opponent who was hardly exerting himself at all."

Bartlett was not so profound a master of the common law as was Mason, but in the shifting phases of a jury trial, he was fully the equal of the great New England leader, in his readiness with the right word, and doing the right thing, leading to a successful verdict. The late Jas. W. Emery, of Portsmouth, who knew Bartlett thoroughly (they were once partners) used to say that no lawyer ever practiced in New Hampshire, who had more tact than Bartlett. At one time in Chief Justice Richardson's court, Mason and Bartlett were on opposite sides. Mason was six feet six, and Bartlett was undersize and quick in every movement. Mason was greatly annoyed by Bartlett, then a very young man, until he could bear it no longer, he exclaimed contemptuously: "Why, I could put you in my pocket." "Then, you'd have more law in your pocket than you have in your head," was Bartlett's quick reply.

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### THE TRUE GRANDEUR OF NATIONS

"But while seeking these blissful glories for ourselves, let us strive to extend them to other lands. Let the bugles sound the truce of God to the whole world forever. Let the selfish boast of the Spartan women become the grand chorus of mankind, that they have never seen the smoke of an enemy's camp. Let the iron belt of martial music, which now encompasses the earth, be exchanged for the golden cestus of peace, clothing all with celestial beauty. History dwells with fondness on the reverent homage that was bestowed, by massacring soldiers, on the spot occupied by the sepulcher of the Lord. Vain man! to restrain his regard to a few feet of sacred mold! The whole earth is the sepulcher of the Lord; nor can any righteous man profane any part thereof. Let us recognize this truth, and now, on this Sabbath of our country, lay a new stone in the grand temple of universal peace, whose dome shall be as lofty as the firmament of heaven, as broad and comprehensive as the earth itself."

—Charles Sumner, delivered in Boston, July 4th, 1848.



## ERSKINE'S EXALTATION OF THE LAW

"I was bred, in my early youth, in two professions (the Navy and Army), the characteristic of which is honor. But after the experience of very many years, I can say with truth, that they cannot stand higher for honor than the profession of the law. Amid unexampled temptations, which, through human frailty, have produced their victims, the great bulk of the members of it are sound; and the cause is obvious: there is something so beautiful and exalted in the faithful administration of justice, and departure from it is so odious and disgusting, that a perpetual monitor is raised up in the mind against the accesses of corruption. The same protection ought also to apply to us, the highest of the Judges."

—*Speech in the House of Lords,—trial of Queen Caroline, 1820.*

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## THE LAW

"A fixed rule may give rise to occasional deviations from justice; but these amount to nothing more than the price which every member of the community may be called upon to pay for the advantage of an enlightened code. No laws can be framed sufficiently comprehensive to embrace the infinite varieties of human action, and the labors of the lawgiver must be confined to the development of those principles which constitute the support and security of society. He views man with reference to the general good, and that alone. He legislates for man in general,—not for particular cases."

—*Lord Erskine in the Banbury Peerage case, in the House of Lords.*

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## THE CHRISTIAN RELIGION

"The supreme enemy of bad habits is religion. I do not mean this is necessary. I have known good men who were not religious, and bad men who pretended to be religious. But the man who in his heart of hearts, as well as in his daily walk, believes and practices the Christian faith, is helped by a power outside of himself, and above himself. His whole moral being is vitalized. I do not pretend to say this, so much from experience—I wish I might—but I do say it with all my might from observation. The wisdom of Aurelius, Epictetus, Confucius, is a tonic to the soul; but the words of Jesus are life itself. As a mere matter of practical success in life; as a mere method of making the most out of himself, I would rather have a son, brother, or friend become a thorough-going Christian than to have any other single good fortune come to him. \* \* 'What,' said Victor Hugo, 'is the grandest thing in the world? The midst of the ocean on a cloudless night. And what is grander than that? The starry heavens, What is grander than the starry heavens? The soul of man.' And it is this soul of man, the noblest thing in all the universe, to which the Christian religion speaks. It is to lift ever upward the soul of man that all the world's saints, statesmen, and heroes have prayed, and thought, and perished. It is to make free and give wings to the soul of man that this Christian civilization exists. That men and women shall be better, nobler, every day, that happiness shall be greater; that our country and the world shall steadily become a lovelier place to live in; that righteousness shall prevail is, after all, the purpose of all progress."

—*Albert J. Beveridge, "Work and Habit," before the Y. M. C. A., Indianapolis, Ind.*



## THOMAS F. BAYARD (1828-1898), Delaware

### A LEGISLATOR'S DUTY

"But, sir, the honorable Senator also stated, as a matter deterring us from our proper action on this bill, that the shadow of intimidation had entered the halls of Congress, and that members of this committee had joined in this report and presented this bill under actual fear of personal violence. Such a statement seems to me almost incredible. I may not read other men's hearts and know what they have felt, nor can I measure the apprehension of personal danger felt by the honorable Senator. It seems to me incredible. Fear, if I had it, had been the fear of doing wrong in this great juncture of public affairs, not the fear of the consequences of doing right. Had there been this intimidation tenfold repeated to which the Senator has alluded, and of which I have no knowledge, I should have scorned myself had I hesitated one moment in my onward march of duty on this subject.

" 'Hate's yell, or envy's hiss, or folly's bray.'—What are they to a man who, in the face of events such as now confront us, is doing that which his conscience dictates to him to do? It has been more than one hundred years since a great judgment was delivered in Westminster Hall in England by one of the great judges of our English-speaking people. Lord Mansfield, when delivering judgment in the case of the King against John Wilkes, was assailed by threats of popular violence of every description, and he has placed upon record how such threats should be met by any public man who sees before him the clear star of duty and trims his bark only that he may follow it through darkness and through light. \* \* \* Mr. President, in the course of my duty here as a representative of the rights of others, as a chosen and sworn public servant, I feel that I have no right to give my individual wishes, prejudices, interests, undue influence over my public action. To do so would be to commit a breach of trust in the powers confided in me. It is true I was chosen a Senator by a majority only, but not for a majority only. I was chosen by a party, but not for a party. I represent all the good people of the State who have sent me here. In my office as a Senator, I recognize no claim upon my action in the name and for the sake of party. The oath I have taken is to support the Constitution of my country's government, not the fiat of any political organization, even could its will be ascertained. In sessions preceding the present I have adverted to the difficulty attending the settlement of this great question, and have urgently besought action in advance at a time when the measure adopted could not serve to predicate its results to either party. My failure then gave me great uneasiness, and filled me with anxiety; and yet I can now comprehend the wisdom concealed in my disappointment, for in the very emergency of this hour, in the shadow of the danger that has drawn so nigh to us, has been begotten in the hearts of American Senators and Representatives and the American People a spirit worthy of the occasion—born to meet these difficulties, to cope with them, and God willing, to conquer them.

"Animated by this spirit the partisan is enlarged into the patriot. Before it the lines of party sink into hazy obscurity; and the horizon, which bounds our view, reaches on every side to the uttermost verge of the great Republic. It is a spirit that exalts humanity, and imbued with it the souls of men soar into the pure air of unselfish devotion to the public welfare. It lighted with a smile the cheek of Curtius as he rode into the gulf; it guided the hand of Aristides as he sadly wrote upon the shell the sentence of his own banishment; it dwelt in the frozen earth-works of Valley Forge; and from time to time it has been an inmate of



the halls of legislation. I believe it is here today, and that the present measure was born under its influence."

—*From Speech, "A Plea for Conciliation," U. S. Senate, Jan. 24, 1877.*

Mr. Bayard was the son of Jas. A. Bayard; admitted to the bar, 1851; was appointed U. S. District Attorney of Delaware in 1869; succeeded his father as U. S. Senator, and was re-elected in 1875 and 1881; was one of the Electoral Commission that decided the fate of the Hayes-Tilden contest; became Secretary of State in 1884; American Ambassador to Great Britain, 1893-7; was leading member of the American Commission, which concluded in 1888, a treaty concerning the vexing Canadian fisheries question; Harvard, Oxford and Cambridge conferred honorary degrees upon him.

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### THE UNCERTAINTY OF THE LAW

Although much has been done in modern times, to methodize the common law, and give it a systematic character, so that we may not only arrive at its principles by regular analysis, but teach its elements and distinction by an enlarged synthesis, yet it is not to be imagined that the profession have to encounter less labor, or to exercise less diligence than formerly, in order to obtain a mastery of the science; or that there is little uncertainty in applying it to the solution of those questions which perpetually arise in human transactions. To a certain extent law must forever be subject to uncertainty and doubt, not from the obscurity and fluctuation of decisions, as the vulgar erroneously suppose, but from the endless complexity and variety of human actions. However, certain may be the rules of the statute or common law, they must necessarily be general in their language and incapable of a minute and perfect application to the *boundless* circumstances of life, which may modify, limit or affect them. It is impossible to provide by any code however extensive, for the infinite variety of distinctions, as to civil justice, arising from the imperfection of human language and foresight, from the conflict of opposing rights, from the effect of real or apparent hardships, and from those minute equities, which are often found in different scales, adding somewhat to the weight of each, but rarely forming an exact equipoise. Until human actions are capable of being limited on every side to a definite range of circumstances, the permutations and combinations of which may be perfectly ascertained and enumerated; until there shall be an entire separation of right from wrong in all the business of life, and the elements of each shall be immiscible and repulsive; until, in short, we shall become absolutely pure and perfect in our actions, and perfectly conusant of all the operations of the past, the present, and the future; there will remain immeasurable uncertainties in the law, which will call for the exercise of professional talents, and the grave judgments of courts of justice. We must be content, since we cannot hope to realize these Utopian dreams of human excellence to secure the upright and enlightened administration of justice, by encouraging learned advocates to fit themselves for eminence at the bar, and by supporting with liberal salaries the dignity, the virtue, and the independence of the bench."—*Mr. Justice Story,—Miscellaneous Writings, 226.*



WILLIAM A. BEACH (1810-1884), New York

## EVIDENCE OF MARRIAGE

“Evidence of marriage! What is evidence of marriage? Why, living together, may it please your honor. Cohabiting together, may it please your honor. Introducing each other as husband and wife, and raising up children together, may it please your honor! For all these relations they were married! Aye! for that going down into the very valley and shadow of death, which a woman assumes in such relations, they were married! They were married when he enjoyed the bloom of her youth and her heart’s loving tenderness, married, when it flattered his vanity to enjoy her beauty. But when we come to that other time, when of all times marriage is most sacred, when they should be leading each other down the western slope of life’s steep hillside to rest together at the foot *in long repose*, then it is that this demon of humanity seeks to *cast her off!* And jeopardize her womanhood! Bastardize her children!

—*The above was an outburst in the Brinkley Divorce case.*

“He was great before a jury; greater in an appellate court; but greatest when all the duties of a trial lawyer were suddenly thrust upon him. He commanded rather than persuaded,”—*Albany Law Journal*, 1875.

## THE DESTROYER OF ANOTHER’S HOME

“Talk about the unfriendliness and the hate of Theodore Tilton toward Henry Ward Beecher, the chosen and invited guest of his friend’s house, who was directed there by the husband in times of his absence, the glory of his presence being the light of that household, if it be true that Henry Ward Beecher debauched its mistress and stained his hearthstone with the violence of his lust, why, is there a husband or a father on earth who will wonder that Theodore Tilton should feel indignation? ‘Oh!’ says my friend, ‘this suit is for revenge.’ No! Not all that you can do, not all that the broad jurisdiction of this court can do, will satisfy the longings of that revenge. It is an imperishable feeling, and will be an unsatisfied feeling so long as the tempter and the seducer of the wife breathes the same air with the living husband. I do not seek to convince you, gentlemen, that Theodore Tilton has not the feelings of a man, and the resentment and passion of a man; but with all this infirmity, this resistless temptation, he yet, strengthened by his love for his wife and his children, and upheld by the grace of his God and the belief in His name, has withheld and stayed his hand so long as mortal heart could bear and hold back the arm destined to work out justice and truth.”

—*From speech for plaintiff in Tilton v. Beecher, for damages. For Benj. F. Tracy’s speech for defendant, Beecher, see Benj. F. Tracy.*

## DESCRIPTION OF BEACH—ALBANY LAW JOURNAL, 1875

“We have for many years believed that as a mere declaimer, Mr. Beach stands not only at the head of the American bar, but at the head of all American orators. His oratorical style is well-nigh perfection. A presence of rare manly beauty and dignity, a voice of great power and sweetness, a vocabulary singularly affluent and sonorous, an unquenchable enthusiasm, and a masculine nobility and vigor of thought, make him a great master of oratory. In regard to his elocution, Mr. Beach has but a single defect, his gestures are constrained, awkward and violent. As a forensic rhetorician, we think he is too level, and that his level is too



high. He would gain in effect by having more conversational and familiar passages. The thunder is grand, but we don't want always to hear it. He commands rather than persuades; and men sometimes set their faces against such advocacy. As an advocate, Mr. Beach suffers from a lack of two gifts, humor and power of illustration, very important defects in an advocate. In his conduct of a case he is remarkably self-possessed, fertile and courageous, but lacks tact and knowledge of human nature. We think, too, from a pretty intimate knowledge of him, that his culture is by no means so broad as that of Evarts or Porter. He is not a man of many books, except law books. Still he is not by any means a genius; he is simply a man of the highest of legal talents."

### EVARTS, PORTER AND BEACH

"Mr. Beach fills us with admiration of the advocate, Mr. Porter makes us in love with his cause; Mr. Beach lifts us up, Mr. Porter carries us away; when we listen to the one we are afraid we shall yield without knowing it. Evarts, Porter, Beach, combined would make the ideal advocate. If we are indicted, we shall retain Evarts as general manager, Porter to sum up to the jury, and Beach to argue the appeal, if we happen to be convicted."—*The Albany Law Journal, during the Beecher Trial.*

### TWO YEARS' STUDY OF THREE BOOKS

He earned his law library and a splendid vocabulary from hiring out to his father, a well-to-do tradesman, to do for a year or two as his father wanted him to do. The parent, accordingly furnished him a Bible, a copy of Shakespeare, and Bunyan's *Pilgrims' Progress*, which were to be read three times thoroughly, and notes made on them. He sent him to live with a farmer some twenty miles away. The young man became charmed by them and mastered these three books.

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### THE NEREIDE

"The *Nereide* was named, governed and conducted by belligerents, with her force or her conduct the neutral shippers had no concern; they deposited their goods on board the vessel, and stipulated for their direct transportation to Buenos Aires. It is true, that on her passage she had a right to defend herself, and might have a violation of the charter party and of her duty. With a pencil dipped in the most vivid colors, and guided by the hand of a master, a splendid portrait has been drawn, exhibiting this vessel and her freighter as forming a single figure, composed of the most discordant materials, of Peace and War. So exquisite was the skill of the artist, so dazzling the garb in which the figure was presented, that it required the exercise of that cold, investigating faculty, which ought always to belong to those who sit on this bench, to discover its only imperfection,—its want of resemblance. The *Nereide* has not that Centaur-like appearance which has been ascribed to her. She does not rove over the ocean hurling the thunders of war while sheltered by the olive-branch of peace. She is not composed in part of the neutral character of Mr. Pinto, and in part of the hostile character of the owner. She is an open and declared belligerent; claiming all the rights and subject to all the dangers of the belligerent character. She conveys neutral property which does not engage in her warlike equipments, or in any employment she may make of them; which is put on board solely for the purpose of transportation, and which encounters the hazard \* \* \* of being taken into port, and obliged to seek another conveyance, should its carrier be captured. In this, it is the opinion of the majority of the Court, there is nothing unlawful. The characters of the vessel and cargo remain as distinct in this as in any other case."

—*William Pinkney in U. S. Supreme Court, 1815, in the case of the Nereide, 9 Cranch, 389.*



on Sale

## JUDAH P. BENJAMIN (1811-1884), Louisiana

### LEFT NO POSTHUMOUS LETTERS

“Even if I had health, and desired ever so much to help you in your work, I have no materials available for the purpose. I have never kept a diary, or retained a copy of a letter written to me. No letters addressed to me by others will be found among my papers when I die. With, perhaps, the exception of Mrs. Jefferson Davis, no one has many letters of mine; for I have read so many American biographies which reflected only the passions and prejudices of their writers, that I do not leave behind me letters and documents to be used in such a work about myself.”

—From a letter to his biographer, Pierce Butler.

### TEST OF A MAN

“I know no better test of a man than his possession of the affection of those most intimate with him.”—From a letter to his daughter, Minette, about to marry Capt. Bouisignac.

### IT IS TRUE I AM A JEW

“It is true that I am a Jew, and when my ancestors were receiving their Ten Commandments from the immediate hand of Deity, amidst the thunderings and lightnings of Sinai, the ancestors of the distinguished gentleman, who is opposed to me, were herding swine in the forests of Scandinavia.”—Benjamin's retort to a Gentile who called him a Jew.

### HIS RULE AS TO FEES

“First, I charge a retainer; then I charge a reminder; next I charge a refresher; and then I charge a finisher.”

### POOR WHEN HE LANDED IN ENGLAND, TO WHICH HE FLED AFTER THE REBELLION

“I was very poor when I landed here (England), and had barely enough to support my family for a few months. I have been lucky enough to receive, however, a hundred bales of cotton that have escaped Yankee vigilance, and the price here is so high that it has given me nearly \$20,000 by means of information furnished by a kind friend in relation to the affairs of a financial institution in which I invested my little fortune and which has already increased in market value 50%. So you see I am not quite a beggar.”—Benjamin's letter to Jas. A. Bayard, Oct. 20, 1865.

In 6 Jas. Schouler's U. S. History, p. 89, he says: “Contemporaries had said at the outset that Toombs was ‘The Brains of the Confederacy;’ but that title, as events developed, belongs rather to Attorney-General Benjamin, the ablest, most versatile, and most constant of all Davis's civil counsellors, as he acted as Secretary of War, after Walker's retirement in March, 1862, to remain to the bitter end, sanguine, serene in bearing, thru all mutations of fortune and misfortune.”

Mr. Justice Field, once said to J. S. Black: “You had better look to your laurels, for that little Jew from New Orleans, has stated your case out of Court.”

It is said the business of Benjamin and Micau, in the law business, in New Orleans, amounted in 1854 to \$75,000 a year; and in 1880, Benja-



min's income at the London Bar, was \$79,880, and for the sixteen years, including 1880, something more than \$700,000.

He wrote, while waiting for a practice in London, that immortal work, "Benjamin on Sales."

—See Benjamin's opinion as to the dual-system of Barristers and Solicitors, in England and the U. S., under Sir Richard Webster.

### SENATOR VEST'S TRIBUTE

"Senator of two Republics, and leader of the bar of two nations."

### FAREWELL TO THE UNION

"And now to you, Mr. President, and to my brother Senators, on all sides of this chamber, I bid a respectful farewell; with many of them whom I have been radically separated in political sentiment, my personal relations have been kindly, and have inspired me with a respect and esteem that I shall not willingly forget; with those around me from the Southern States I part as men part from brothers on the eve of a temporary absence, with a cordial pressure of the hand and a smiling assurance of the speedy renewal of sweet intercourse around the family hearth. But to you, noble and generous friends, who, born beneath other skies, possess hearts that beat in sympathy with ours; to you who solicited and assailed by motives the most powerful that could appeal to selfish natures, have nobly spurned them all; to you, who, in our behalf, have bared your breasts to the fierce beatings of the storm, and made willing sacrifice of life's most glittering prizes in your devotion to constitutional liberty; to you, who have made our cause your cause, and from many of whom I feel I part forever, what shall I, can I say? Naught, I know and feel, is needed for myself; but this I shall say for the people in whose name I speak today; whether prosperous or adverse fortunes await you, one priceless treasure is yours, the assurance that an entire people honor your names, and hold them in grateful and affectionate memory. But with still a sweeter and more touching return shall your unselfish devotion be rewarded. When, in after days, the story of the present shall be written when history shall have passed her stern sentence on the erring men who have driven their unoffending brethren from the shelter of their common home, your names will derive fresh lustre from the contrast; and when your children hear repeated the familiar tale it will be with glowing cheek and kindling eye; their very souls will stand a-tiptoe as their sires are named, and they will glory in their lineage from men of spirit as generous and of patriotism as high-hearted as ever illustrated or adorned the American Senate."—*From Speech on Leaving the United States Senate in 1861.*

### HIS BRIEF ARGUMENTS

"Mr. Benjamin frequently argued before the Supreme Court, and he very seldom spoke more than twenty minutes. Sometimes his argument consisted merely of a lucid statement of the point, which he conceived to be at issue."—*Benjamin R. Curtis.*

### AS CONFEDERATE SECRETARY OF STATE

"I was brought into close relation with Mr. Benjamin, occupied the adjoining room to his, and shared his confidence and friendship to an unusual extent. This enables me not only to estimate him as a public official, but to weigh and appreciate his many personal gifts and admirable qualities. His studies and training especially fitted him for such a position. He had a thorough acquaintance with history, with both the



common and civil law, with international law and modern precedents, with the classics, ancient and modern; the French language and modern literature; and with the commerce, institutions, and political conditions of foreign states. He was, indeed, a citizen of Louisiana, but yet far more a cosmopolitan. A man of society, his tact in personal intercourse was unfailing, his politeness invariable. In all the trials and anxieties of the great struggle, I never saw his temper ruffled or embittered. His opinions were generally decided but courteously expressed, even when he differed most widely from others. In his most unguarded moments, I cannot recall that he ever uttered an oath or a violent expression. He was ever calm, self-poised and master of all his resources. His grasp of a subject seemed instantaneous; his mind appeared to move without friction. His thought was clear. His style, whether in composition or conversation, was natural, orderly, and perspicuous. I do not affirm that his compositions were wholly unstudied, but, whatever art there was, he had the art to hide. I have known him often to compose a long despatch or state paper with great rapidity, with hardly a word changed or interlined in the whole manuscript."—*Chief Clerk of the Staté Department of the Confederacy.*

### HIS CAREER AS A LONDON LAWYER

"When he first settled in London he practiced in all the courts, and made many masterly addresses to juries; but in the very peculiar and difficult art of examining and cross-examining witnesses and managing a case at *nisi prius*, he did not shine. This requires a special experience with the peculiar class of jurymen who are to be influenced. \* \* \* But in arguments before the court which depended on the scientific treatment of legal questions, his superiority became early established. After a few years he confined himself to these. *Anson v. N. W. Ry.*, was his last case at *nisi prius*. Thenceforward he restricted himself to the court in banc or Courts of Appeal, but was likewise often taken into chancery to argue before an equity judge. Still later, feeling the absolute necessity of restricting his exertions, he refused to go into any court other than the House of Lords, and the Privy Council, except for a fee of \$500, and a client having demanded a consultation at his own house (the client's) the fee was \$1,500. The Privy Council was, perhaps, his favorite tribunal; his wide acquaintance with foreign systems of law qualified him in an eminent degree to deal with the cases from the colonies and dependencies of Great Britain which came before the Judicial Committee in Downing Street. His great faculty was that of argumentative statement. He would so put his case, without in the least departing from candor, that it seemed impossible to give judgment except in one way. It must be confessed that this is a dangerous power, and sometimes imposed on himself. His 'opinions' were, in consequence, sometimes unduly sanguine, or at least, seemed so in cases which he had not the opportunity of arguing himself. When he did argue he often justified by his advocacy that which had seemed the hardest. The *Franconia* was, perhaps, the best known of his cases. It dealt to some extent, with international law, in which, having been not only a lawyer but a statesman, he was at home; but it was a criminal case, and so of a class with which he was not usually concerned. More characteristic examples will be revealed by a glance at the columns of the Times between 1872 and 1883, or by dipping into the pages of the 'Appeal Cases.' Here we find him arguing questions about bills of exchange, a husband's liability for his wife's debts (*Debenham v. Mellon*), the duties of the charterer of a ship, the explicit rights of the Caledonian and North British Railways under their acts, the re-opening of accounts closed in New Zealand nine years before, the perjury of Thomas Castro, otherwise Arthur Orton, otherwise Sir Roger Tichborne, etc."—*The Times, May 9, 1884; Butler's Life, 401-2.*



## SKILL IN HANDLING WITNESSES

Contrary to the above, Baron Pollock, gives several anecdotes, to illustrate his skill in handling witnesses, remarking: "Although not eloquent as a speaker, he always showed great experience in the conduct of a *nisi prius* issue, and thoroughly knew the rules of the game; clear in the statement of the facts, an effective cross-examiner, and cautious in the extreme of expressing any false or figurative surroundings, he presented his client's case with great force to the jury."

—*Green Bag*, Sept. 1898, 400.

## HIS LONDON INCOME

"Within five years after arriving in London, after the collapse of the Confederacy, at the age of 55, his practice was \$10,000 a year. His income in 1880, reached \$79,860. He built a house in Paris, which with the furnishings, cost him \$80,000; and when he lived in Louisiana he had to give up his sugar plantation, 'Bellechasse,' because he had to pay \$60,000 for indorsing a friend's note. He made three fortunes. Began as a penniless lawyer's clerk in New Orleans."

—*Butler's Life of Benjamin*, 418-20.

## WAS NEVER IN A HURRY

"Mr. Benjamin was never in a hurry; never impatient with this big thing and that big thing, never pretentious, always the same calm, equable, diligent, affable man, getting through an enormous mass of work, day by day, without ostentation and without friction."

—*Butler's Life of Benjamin*, 423.

## HIS TREATISE ON SALES

"I hope in Nov., or Dec., next (1867) to have my 'Treatise on Sales' ready for publication. It will bring me into more prominence with the profession, and, perhaps, secure a more rapid advance in getting business."

—*Benjamin wrote Mrs. Kruttschnitt*, April 11, 1867.

"The book went through three editions before his death, and became a classic on both sides of the Atlantic as 'Benjamin on Sales.' The selection of the subject in itself shows acuteness of judgment, for this extremely difficult question had not been adequately discussed; and its treatment involving, as the preface explained, 'an attempt to develop the principles applicable to all branches of the subject,' there was wide scope not only for the accumulations of varied learning and experience, incident to such a life as Benjamin's had been, but for the display of that power of comprehension, of logical and perspicuous development of first principles for which he was remarkable, though the English public had yet seen but little of it in him. It was this intellectual power, the clear perception of essential rules in their practical application, that won for the book its immediate popularity with the legal profession, and we may add, has preserved that high standing. Soon after its publication, Baron Martin, when taking his seat upon the bench, one morning, asked to have Mr. Benjamin's work handed to him. 'Never heard of it, my Lord,' was the answer of the chief clerk. 'Never heard of it!' ejaculated Sir Samuel Martin; 'mind that I never take my seat here again without that book by my side.' "—*Pierce Butler's Life of Benjamin*, 392-3.



## JEREMY BENTHAM (1748-1832), England

### NO SECURITY WITHOUT LAW

"Law, alone, has accomplished what all the natural feelings were not able to do; law, alone, has been able to create a fixed and durable position, which deserves the name of property. The law, alone, could accustom men to submit to the yoke of foresight at first painful to be borne, but, afterwards agreeable and mild. It, alone, could encourage them in labor, superfluous at present, and which they are not to enjoy till the future. Economy has as many enemies as there are spendthrifts, or men who would enjoy without taking the trouble to produce. Labor is too painful for idleness; it is too slow for impatience. Cunning and injustice underhandedly conspire to appropriate its fruits; insolence and audacity plot to seize them by open force. Hence, Society, always tottering, always threatened, never at rest, lives in the midst of snares. It requires, in the legislator, vigilance continually sustained, and power always in action, to defend it against his constantly reviving crowd of adversaries.

"The law does not say to a man. 'Work, and I will reward you;' but it says to him, 'Work, and by stopping the hand that would take them from you, I will insure to you the fruits of your labor, its natural and sufficient reward, which, without me, you could not preserve.' If industry creates, it is the law which preserves; if, at the first moment, we owe everything to labor, at the second, and every succeeding moment, we owe everything to law.'

"In order to force a clear idea of the whole extent which ought to be given to the principle of security, it is necessary to consider, that man is not like the brutes, limited to the present time, either in enjoyment or suffering; but that he is susceptible of pleasure and pain by anticipation, and that it is not enough to guard him against actual loss, but also to guarantee to him, as much as possible, his possessions against future losses. The idea of his security must be prolonged to him throughout the whole vista that his imagination can measure.

"The disposition to look forward, which has so marked an influence upon the condition of man, may be called expectation, expectation of the future. It is by means of this that the successful moments which compose the duration of life are not like isolated and independent points, but become parts of a continuous whole. Expectation is a chain which united our present and our future existence, and passes beyond ourselves to the generations which follow us. The sensibility of the individual is prolonged through all the links of this chain. The principle of security comprehends the maintenance of all these hopes; it directs that events, inasmuch as they are dependent upon the laws, should be conformed to the expectations to which the laws have given birth."

—*'Principles of the Civil Code.'*

Bentham was one of the most productive and influential of English writers on politics and jurisprudence.

"I do not know a single law reform effected since Bentham's day which cannot be traced to his influence; but a still more striking proof of the clearing of the brain produced by this system (The system of Hobbes, Bentham and Austin), even in the earlier stage, may be found in Hobbes. In his 'Dialogue of the Common Laws,' he argues for a fusion of law and equity, a registration of titles to land, and a systematic penal code, three measures which we are on the eve of seeing carried out at this moment."—*Sir Henry Maine in his 'Early History of Institutions.'*



## THE BAR OF PENNSYLVANIA

"In the beginning we must not forget that Philadelphia was the capitol of the whole country. In provincial times it was the greatest of the Colonial cities. The first lawyers we ever had were bred in the Temple, and came across the seas to establish themselves here. They had walked in those ways trodden by Lamb. Like him, they too had known a Thomas Coventry whose gait was peremptory and path-keeping—whose step was massive and elephantine, and they had seen Lord Hardwicke and Northington, and Ryder, Wiles and Macclesfield and Wilmot and Camden and Mansfield, and they had heard the great leaders of those days and learned their lessons at their feet and they had brought with them the knowledge of principle and practice from Westminster Hall, and hence it was in the beginning we started right, with a solid foundation of professional character and duty. Here the government of the U. S. first saw the light of day, and here all the great questions of constitutional law were first discussed and considered, and these questions were handled by such men as Jared Ingersoll, Mr. Lewis, Mr. Tilghman, Mr. Rawle, and Mr. Dallas. Those were the men that gave name and fame to our Bar. Heaven sent may we never lose it! They established a standard by which we have been obliged to live. How delightfully Mr. Bunyde describes these gentlemen, and the history of their career. Can I say more of these men or their works than is said by Lord Mansfield himself in a letter to Chief Justice McKean, in which he acknowledges the receipt of Dallas' Reports, in these words:

"Sir: I am not able to write with my own hand and must, therefore, beg leave to use another to acknowledge the honor you have done me, by your most obliging and elegant letter, and the sending me Dallas' Reports. I am not able to read myself, but I have heard them read with much pleasure. They do credit to the Court, the Bar and the Reporter; they show readiness in practice, liberality in principle, strong reason and legal learning; the method, too, is clear, and the language plain. I undergo the weight of age and other bodily infirmities, but blessed be God! my mind is cheerful, and still open to that sensibility which praise from the praiseworthy never fails to give *Laus landariate*. Accept thanks of, sir, your most obliged and obedient humble servant.' "

—By Benj. H. Brewster.

## JAS. T. BRADY GRASPED LAW, AND FACTS, DURING TRIAL

Says Luther R. Marsh: "I had a case some years ago of such importance to property and character, that I deemed it advisable to call in Mr. Brady to share the responsibility. But so crowded and imperative were his engagements, that I found it impracticable to meet him in consultation—all our appointments fell through. Nevertheless, I sent him notice of the time the court had assigned for the arguments, and he was promptly there; though wholly uninformed of the facts or position of the case, I was glad for the magnetism of his presence, though anticipating but little actual support from his reply. Purposely opening very fully—more for him than the court—I observed him rapidly taking notes; and when I had concluded, he attached and folded his sheets and handed them to me. I found on perusing them, that he had grasped the whole case—comprehending every question involved in it, adding additional points of great weight and importance, which he had prepared on the occasion. Then after the opposing argument, followed his reply—so complete, so well arranged, so powerful, that it would have been remarkable under any state of preparation, but most extraordinary as a spontaneous production."—L. B. Proctor, in *'Bench and Bar of New York,'* article, Jas. T. Brady, 272.



## THOMAS H. BENTON (1782-1858), Missouri

### ANDREW JACKSON

"Historically, then, shall I view him; and limiting this view to his civil administration, I demand, where is there a chief magistrate of whom so much evil has been predicted and from whom so much good has come? Never has any man entered upon the chief magistracy of a country under such appalling predictions of ruin and woe! Never has anyone been so pursued with direful prognostications, never has anyone been so beset and impeded by a powerful combination of political and moneyed confederates, never has anyone in any country where the administration of justice has risen above the knife or the bowstring been so lawlessly and shamelessly tried and condemned by rival enemies, without hearing, without defense, without the forms of law and justice! History has been ransacked to find examples of tyrants sufficiently odious to illustrate him by comparison. Language has been tortured to find epithets sufficiently strong to paint him in description. Imagination has been exhausted in her efforts to deck him with revolting and inhuman attributes. Tyrant, despot, usurper, destroyer of the liberties of his country; rash, ignorant, imbecile; endangering the public peace with all foreign nations; destroying domestic prosperity at home; ruining all industry, all commerce, all manufactures; annihilating confidence between man and man; delivering up the streets of populous cities to grass and weeds, and the wharves of commercial towns to the encumbrance of decaying vessels; depriving labor of all reward; depriving industry of all employment; destroying the currency; plunging an innocent and happy people from the summit of felicity to the depths of misery, want, and despair. Such is the faint outline, followed by actual condemnation, of the appalling denunciations daily uttered against this one *man*, from the moment he became an object of political competition, down to the concluding moment of his political existence.

"The sacred voice of inspiration has told us that there is a time for all things. There certainly has been a time for every evil that human nature admits of to be vaticinated of President Jackson's administration; equally certain the time has now come for all rational and well-disposed people to compare the predictions with the facts, and to ask themselves if these calamitous prognostications have been verified by events? Have we peace or war with foreign nations. Certainly we have peace with all the world, peace with all its benign, and felicitous influences! Are we respected, or despised abroad? Certainly the American name never was more honored throughout the four quarters of the globe than in this very moment. Do we hear of indignity or outrage in any quarter; of merchants robbed in foreign ports, of vessels searched on the high seas, of American citizens impressed into foreign service, of the national flag insulted anywhere? On the contrary, we see former wrongs repaired, no new one inflicted. France pays twenty-five millions of francs for spoliation committed thirty years ago; Naples pays two millions one hundred thousand ducats for wrongs of the same date; Denmark pays six hundred and fifty thousand rix-dollars for wrongs done a quarter of a century ago; Spain engages to pay twelve millions of reals vellon for injuries of fifteen years' date; Portugal, the least in the list of former aggressors, admits her liability and only waits the adjustment of details to close her account by adequate indemnity."

### NATHAN DANE

"He (Webster) has brought before us a certain Nathan Dane, of Beverly, Massachusetts, and loaded him with such an exuberance of



blushing honors as no modern name has been known to merit or to claim. Solon, Lycurgus, and Numa Pompilius are the renowned legislators of antiquity to whom he is compared, and only compared for the purpose of being placed at their head. So much glory was earned by a single act, and that act, the supposed authorship of the ordinance of 1787, for the government of the Northwestern Territory, and especially of the clause in it which prohibits slavery and involuntary servitude. (After reciting the history of the ordinance to show that Dane was not its author.) \* \* \*

"So passes away the glory of this world. But yesterday the name of Nathan Dane, of Beverly, Massachusetts, hung in equipoise against half the names of the sages of Greece and Rome. Poetry and eloquence were at work to blazon his fame; marble and brass and history and song were waiting to perform their office. The celestial honors of the apotheosis seemed to be only deferred for the melancholy event of the sepulchre. Today all this superstructure of honors, human and divine, disappears from the earth. The foundation of the edifice is sapped; and the superhuman glories of him who, twenty-four hours ago, was taking his station among the demigods of antiquity, have dispersed and dissipated into thin air—vanished like the baseless fabric of a vision which leaves not a rack behind."

—*Reply to extravagant praise of Dane, by Webster in U. S. Senate, 1829.*

## OREGON

"It is valuable, both as a country to be inhabited and as a position to be held and defended. I speak of it, first, as a position commanding the North Pacific Ocean and overlooking the eastern coast of Asia. The North Pacific is a rich sea, and is already the seat of a great commerce; British, French, American, Russian, and ships of other nations, frequent it. Our whaling-ships cover it; our ships-of-war go there to protect our interest, and, great as that interest now is, it is only the beginning. Futurity will develop an immense, and various, commerce on that sea, of which in the merchant-ships which carry it on, nor the military marine which protects it, can find a port to call its own within 20,000 miles of the field of its operations. The double length of the two Americas has to be run, a stormy and tempestuous cape to be doubled, to find itself in a port of its own country; while here lies one in the very edge of its field, ours by right, ready for use, and ample for every purpose of refuge and repair, protection and domination. Can we turn our back upon it, and, in turning the back, deliver it up to the British? Insane and suicidal would be the fatal act!

\* \* \* "The trade of the East has always been the richest jewel in the diadem of commerce. All nations, in all ages, have sought it; and those which obtained it, or even a share of it, attained the highest degree of opulence, refinement, and power. The routes through which it flows fertilized deserts, and built up cities and kingdoms amidst the desolation of rocks and sands. Phœnicia, Egypt, Persia were among the ancient thoroughfares of this commerce; Constantinople and Alexandria among its modern channels; and Venice and Genoa in the South, and Bruges and Antwerp in the North, the means of its distribution over Europe. All grew rich and powerful upon it; and with wealth and power came civilization and refinement. The Cape of Good Hope became the recent route, with wealth to its discoverers, the Portuguese, and to all their rivals and followers, the Dutch, English, French, and others."

—*From Speech in U. S. Senate, on 'the Oregon Settlement,' 1847. Benton had studied the Oregon question for 25 years.*



## REPLY TO McDUFFIE ON ANNEXATION OF TEXAS

"The Senator from South Carolina complains that I have been arrogant and overbearing in this debate, and dictatorial to those who were opposed to me. So far as this reproach is founded, I have to regret it, and to ask pardon of the Senate and of its members. I may be in some fault. I have, indeed, been laboring under deep feeling; and while much was kept down, something may have escaped. I marked the commencement of this Texas movement long before it was visible to the public eye; and always felt it to be dangerous, because it gave the plotters the honest sympathies of the millions. I saw men who never cared a straw about Texas, one of whom gave it away (Calhoun, in Monroe's Cabinet), another of whom voted against saving it (Tyler, on Clay's resolutions, in 1820), and all of whom were silent and indifferent while the true friends of the sacrificed country were laboring to get it back. I saw these men lay their plot in the winter of 1842-43, and told every person with whom I talked, every step they were to take in it. All that has taken place, I foretold; all that is intended, I foresaw. The intrigue for the presidency was the first act in the drama; the dissolution of the Union, the second. And I, who hate intrigue and love the Union, can only speak of intriguers and disunionists with warmth and indignation. The oldest advocate for the recovery of Texas, I must be allowed to speak in just terms of the criminal politicians who prostituted the question of its recovery to their own base purposes, and delayed its success by degrading and disgracing it.

"The Senator from South Carolina compares the rejected treaty to the slain Caesar, and gives it a ghost, which is to meet me at some future day, as the spectre met Brutus at Philippi. I accept the comparison, and thank the Senator for it. It is both classic and just; for as Caesar was slain for the good of his country, so has been this treaty; and as the spectre appeared at Philippi on the side of the ambitious Anthony and the hypocrite Octavius, and against the patriot Brutus, so would the ghost of this poor treaty, when it comes to meet me, appear on the side of the President and his Secretary, and against the man who was struggling to save his country from their lawless designs. But here the comparison must stop; for I can promise the ghost and his backers that if the fight goes against me at this new Philippi with which I am threatened, and the enemies of the American Union triumph over me as the enemies of Roman liberty triumphed over Brutus and Cassius, I shall not fall upon my sword, as Brutus did, though Cassius be killed, and run it through my own body; but shall save it, and save myself for another day, and for another use, for the day when the battle of the disunion of these States is to be fought, not with words, but with iron, and for the hearts of the traitors who appear in arms against their country."—*From speech in U. S. Senate, 1844.*

## GRAND DESIGN OF COLUMBUS

"Let us rise to the grandeur of the occasion. Let us complete the grand design of Columbus by putting Europe and Asia into communication, and that to our advantage, thru the heart of our country. Let us give to his ships, converted into cars, a continued course unknown to all former times. Let us make the iron road, and make it from sea to sea, States and individuals making it East of the Mississippi, the nation making it West. Let us now in this convention rise above everything sectional, personal, local. Let us beseech the National Legislature to build the great road upon the great national line which unites Europe and Asia, San Francisco at one end, St. Louis in the middle, the national



metropolis and great commercial emporium at the other; and which shall be adorned with the crowning honor — the colossal statue of the great Columbus, whose design it accomplishes, known from a granite mass of a peak of the Rocky Mountains, overlooking the road — the mountain itself a pedestal, and the statue a part of the mountain, pointing with outstretched arm to the western horizon, and saying to the flying passengers, 'There's the East, there is India.'"

—*Speech made in St. Louis, Mo., in 1844, at the St. Louis, Pacific R. R. Convention.*

Benton was born at Hillsborough, N. C., 1782, and died in St. Louis, Mo., in 1858. He moved to Nashville, Tenn., 1799, where he practiced law, fought a duel with Andrew Jackson; moved to St. Louis, Mo., 1815; started a newspaper, in the conduct of which he became involved in several duels.

Was elected to the U. S. Senate, upon admission of the State of Missouri into the Union, in 1820, and continued in that office 30 years.

Says Geo. G. Vest: "I heard Benton in 1856, when candidate for Governor of Missouri, declare emphatically in a public address that if he had been President in 1828, instead of threatening to hang Calhoun, he would have hanged him on the eastern exposure of the Capitol, and appealed to the people of the U. S., to 'vindicate his action.'"

—*Wm. M. Meigs' Life of Benton, 508.*

Says W. V. N. Bay, in his *Reminiscences of the Bench and Bar of Missouri*, pp. 3-4:

"That he (Benton) was inferior to Webster as a close, logical reasoner; that he was not the equal of Clay as an orator; and that Calhoun surpassed him in the power and condensation of language, all must admit. But in depth of mind, originality of thought, and the power to conceive and execute any great measure of public welfare, he was the equal of either, and, in some respects, the superior of all; for the dominant characteristics of all were, to a great extent, combined in him."

## BENTON NUGGETS

DOUGLAS. "Douglas never can be President, sir, no sir. Douglas can never be President, sir. His legs are too short, sir. His coat like a cow's tail, hangs too near the ground, sir."—*Said in 1840.*

DANGER. "Neither nations nor individuals ever escaped danger by fearing it. They must face it and defy it."

—*In one of his Oregon speeches.*

QUARREL. "I never quarrel, sir, but I sometimes fight, sir, and whenever I fight, sir, a funeral follows, sir."—*To an opposing Senator.*

SQUATTER SOVEREIGNTY. "Oh, squatter sovereignty. Where were you then? \* \* \* Well do I remember the day when it was first shown in the Senate. \* \* \* It was in 1848, and it was received as nonsense, as the essence of nonsense, as the quintessence of nonsense, as the five-times distilled essence of political nonsensicality."

ST. LOUIS. "St. Louis is yet to find herself as near Canton as she is to London, with a better and safer route by land and sea to China and Japan, than she now has to France and Great Britain."

CALHOUN. "All Calhoun's views are morbid, the vagaries of a diseased imagination."

KANSAS CITY "There, gentlemen, where the rocky bluff meets and turns aside the sweeping current of this mighty river; here where the Missouri, after running its southward course for nearly 2,000 miles, turns eastward to the Mississippi, a large commercial and manufacturing community will see a great city on these hills." (Said while Benton was



a guest of the town council of the City of Kansas, (the embryo Kansas City), in May 1854,—four years before his death, when the town had but 478 inhabitants, in 1855. Twenty years before this, Benton wrote, while standing at Randolph, in Clay County, across the river, pointing to the bank in the river seven miles towards its source.

“There is the point which is destined to become the largest city west of St. Louis.”

“WHAT ARE THE FACTS.” “What are the facts? Give us the facts; Webster said that he knew more political facts than any other man he ever met,—even more than John Quincy Adams,—and possessed a wonderful fund of general knowledge.\*\*\* When a Senator made a mistake as to any historical fact or manifested any desire to become acquainted with any matter which he did not thoroughly understand, Benton had the custom of calling a boy, sending him to the library for a book containing the information, finding the page, and sending it to the Senator, with his compliments.”—*John Wentworth, of Chicago, Ill.*

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## PUBLIC OPINION INVARIABLY AGAINST THE PRISONER

“My learned friend, the District Attorney (A. Oakly Hall), and myself, do not exactly agree in our notions about men and human nature. He said that I ‘spoke rather like a cynic than a philosopher,’ when I declared that man would much more readily believe evil of his neighbor than good. I retain my opinion. There is an instinct in every human being that relates to the purpose for which the Almighty seems to have designed him, a roving hunter, ‘to live as the hunter liveth, and to die as the hunter dieth.’ No race of mankind is ever satisfied with the peace in which it first achieved prosperity. However large, rich and fertile the domain possessed, we are ever eager to push out, even in the midst of our luxuries and enjoyments, and seek new theatres for physical and intellectual effort. When we look back upon history, we find that civilization has forced its path over the ruins of empires, and there is not a single fallen column, there is not a smouldering cornice, nor a piece of stone round which the weeds cluster in desolate places where at one period luxury, refinement and art may have existed, which was not in its overthrow a necessary foothold for that progress, which we think, has advanced us to a position so enviable in these latter days. We are a restless, roving race of hunters; and the very moment you give the common multitude an object to pursue, the instinct of the chase naturally tends to superiority over judgment and humanity. When anything flieth from mankind they all pursue; let it turn with the courage of a rat, and the multitude are likely to fall back. The instinct of our race is developed in the administration of the law. When a man is charged with what is termed a ‘great crime,’ did you ever know the newspapers to suggest that he might possibly be innocent? Is that because editors are destitute of humanity? No, but entirely because of this instinct. If you go into a court of justice you will find that in almost every extraordinary case, the instincts of the multitude are with the state. When the prosecution are in want of testimony, any man who, far off in Texas, knows a fact that can assist the People, will communicate it to the district attorney; but if you were charged with crime, accused, though innocent, arrested and brought to trial, men who were present and saw the deed committed by another, would often rather suffer you to die guiltless on the scaffold, than come forward and confess that they were in the scene of the occurrence, if that might expose them to shame or even to trouble.”

—*Jas. T. Brady, in his argument in defense of Huntington, charged with forgery, Dec. 29, 1856.*



## HORACE BINNEY (1780-1875), Pennsylvania

### U. S. SUPREME COURT—GUARDIAN OF CONSTITUTION

“What were the States before the Union? The hope of their enemies, the fear of their friends, and arrested only by the Constitution from becoming the shame of the world. To what will they return when the Union shall be dissolved? To no better than that from which the Constitution saved them and probably to much worse. They will return to it with vastly augmented power and lust of domination in some States, and irremediable disparity in others, leading to aggression, to war and to conquest. They will return to it, not as strangers who have never been allied, but as brethren alienated, embittered and irreconcilably hostile. In brief time their hands may be red with each other’s blood, and horror and shame together may then bury liberty in the same grave with the Constitution. The dissolution of the Union will not remedy a single evil, and may cause ten thousand. It is the highest imprudence to threaten it; it is madness to intend it. If the Union we have cannot endure, the dream of the Revolution is over, and we must wake to the certainty that a truly free government is too good for mankind.”—*From an Eulogy on John Marshall, 1835.*

### THE SACRED RIGHTS OF CONSCIENCE

“Whoever reads this will by its own light only, and this is all that the court have to guide them, must therefore see that there is nothing in it like an interdiction of instruction in the principles of the Christian religion; and I contend for this the more strenuously because the trust, I confidently believe, must be executed, and I should deprecate it as a great public evil, as well as a perversion of the will, to have a doubt remain of either the right or the duty of the trustees to give religious instruction. \* \* \* If this exclusion or restriction in the testator’s will is illegal, it is for that reason null and absolutely void, and the consequence is not that the charity fails, but that the restraint—the condition—is defeated, and the court must establish the charity according to their sense of the law. It is a condition subsequent to the gift. The estate has vested in the trustee, and this restraint or condition is a restraint upon its use. If the restraint is illegal, the use is not bound by it. The complainants gain nothing by the objection but the unenviable satisfaction of holding up their benefactor to judicial censure, and possibly to moral reprehension.”

—*Vidal v. Girard’s executors, 2 Howard, 127-183. (The great Girard Will case, in which Binney vanquished Daniel Webster, in 1844.)*

AN INDEX. “I certainly think that the best book in the world would owe the most to a good index, and the worst book, if it had but a single good thought in it, might be kept alive by it. I have come to regard a good book as curtailed of half its value if it has not a pretty full index. It is almost impossible without such a guide to reproduce on demand the most striking thoughts or facts the book may contain, whether for citation or further consideration.”—*H. Binney.*

HORACE BINNEY. “The head of the American Bar.”—*Wm. M. Evarts and Chas. Sumner.*

### CHARITABLE USES

“It has been said that the law of England derived the doctrine of charitable uses from the Roman Civil Law. Lord Thurlow has said it,



and there are others who have said the same thing. It is by no means clear. It may be very well doubted. It is not worth the time necessary for the investigation. One of the worst doctrines, as formerly understood in England, the doctrine of *Cy pres*, has been derived from the Roman Law, and perhaps little else. Constantine certainly sanctioned what are called pious uses. A successor, Valentinian, restrained donations to the poor; and Justinian abolished the restraint, and confirmed and established such uses generally and forever."

—From *Binney's argument in Vidal v. City of Philadelphia*, 26 (1844). This was the *Girard will case controversy*.

### THE GIRARD WILL CASE

The spring of 1844 was notable in Washington for the argument in the famous *Vidal v. Philadelphia* (2 Howard, 127), involving the will of Stephen Girard. The case had been first argued in 1843, by Walter Jones against John Sergeant, but owing to the absence of three of the judges, it was re-argued in 1844, by Jones and Webster against Horace Binney and John Sergeant. When the case was carried to the Supreme Court of the U. S., Binney was joined with Sergeant at the latter's request, and Binney went to England to make himself more familiar with the law of charitable uses. He returned fully prepared for the encounter. He was tall, large, well formed, always well dressed and an Apollo in manly beauty. He spoke slowly and distinctly; his voice was full, musical and well modulated; his manners a blending of dignity, ease, suavity and high refinement. He spoke three days, during which the court-room was filled to its utmost capacity by beauty, talent and eminence; lawyers of eminent ability were drawn from Richmond, Baltimore and New York to listen. Mr. Sergeant was a lawyer of no less ability than Mr. Binney; but he has not his fine voice or imposing appearance. He spoke two days. Mr. Webster who made the closing argument in the case, had a Herculean task to perform. If any one could do it, he could; but it was beyond his power. He occupied the court for three days, the room, the whole time, being densely crowded. John Quincy Adams said that he was to have \$50,000 if he had succeeded. Mr. Jones spoke nearly three days. Judge Story who wrote the opinion of the Court, upholding the will, and against Webster's argument, was sustained by unanimous concurrence of the other judges, and the profession generally supported it, especially was this true of Chancellor Kent. So great were the researches of Binney, that it may be said that when a similar case decided by Marshall in 1819 (*Baptist Ass'n. v. Hart's Executors*, 4 Wheaton, 1), the calendars of the proceedings in chancery, from which Binney gleaned more than fifty precedents for his contention were not even printed; and Marshall had positively stated that there was no trace whatever of any precedent." — *Warren's 'History of the American Bar,'* 431-2.

### GREAT JUDGES

"The world has produced fewer instances of truly great judges than it has of great men in almost every other department of civilized life. A large portion of the ages that are passed has been altogether incapable of producing this excellence. It is the growth only of a government of laws, and of a political constitution so free as to invite to the acquisition of the highest attainments, and to permit the exercise of the purest virtues, without exposure or degradation and contempt, under the frown of power. The virtues of a prince may partially correct the mischiefs of arbitrary rule, and we may see some rare examples of judicial merit, where the laws have no sanction, and the government no foundation,



but in the uncontrolled will of a despot; but a truly great judge belongs to an age of political liberty, in which he is the representative of the abstract justice of the people in the administration of the law, and is rewarded for the highest achievements of duty by proportionate admiration and reverence."—*From Binney's Eulogy of Jno. Marshall, 1835.*

### BINNEY AND SERGEANT

"Binney never lost a case that he ought to have gained when Mr. Sergeant gained a case, that he ought to have lost."—*Mr. Chauncey, 2 The Forum, 214.*

### TWO WAYS OF STUDYING LAW

"There are two different methods of acquiring knowledge of the laws of England, and by each of them men have succeeded in public estimation to an almost equal extent. One of them, which may be called the old way, is a methodical study of the general system of the law, and its grounds and reasons, beginning with the fundamental law of estates and tenures, and pursuing the derivative branches in logical succession, and the collateral subjects in due order; by which the student acquires a knowledge of principles that rule all departments of the science, and learns, to feel, as much as to know, what is in harmony with the system and what is not. The other is to get an outline of the system by the aid of commentaries and to fill up by desultory reading of treatises and reports, according to the bent of the student, without much shape or certainty in the knowledge so acquired until it is given by investigation in the course of practice. A good deal of law may be put together by a flexible man in the second of these modes, and the public is often satisfied; but the profession itself knows the first, by its fruits to be the most effectual way of making a great lawyer."—*Binney's Article in Encyc. Americana, Art. Edward Tilghman.*

### THE LAW A NOBLE STUDY

"The law is a noble study, and worthy of the most ardent devotion. You will find the road to success a hard one to travel; harder than in my day, for methods have changed, and competitors are more numerous. But do not suffer yourself to become discouraged. For more than eight years after my admission to the bar, I could not afford to stir my porridge with a silver spoon."—*Letter by Binney to Student, Green Bag, Oct., 1893.*

### HAMILTON

"Hamilton was the greatest man this country ever produced. He did more than any other man of his day to give us a government; and Chief Justice Marshall, in expounding the Constitution, applied Hamilton's principles and borrowed his language. Read Hamilton's report as Secretary of the Treasury, upon the Funding Scheme, and then read Marshall's opinion in *McCulloch v. the State of Maryland.*"

—*Said by Binney, quoted by Green Bag, Oct., 1893.*

## JOEL PRENTISS BISHOP (1811-1884), Massachusetts

### THINKING

"The loftiest mind if it does not think, places itself on a level with the lowest, and the world never contained even one man from whom thought was not on some occasion absent."

### ON STUDYING THE LAW

"If you wish to dwarf yourself and make yourself and make your legal exertions amount to zero, confine yourself to State law. You will certainly succeed. A lawyer to be anything must enlarge his view by reading, and, above all, by thinking. And let me caution you *not to believe everything you read in a law book*. Take the caution with you in reading my books. I know that they are more accurate than our books average, *but nobody is to be trusted*. True, I trust myself, but God has given me nobody else to trust. And he has done the like with you. You must *trust yourself*; and you are undoubtedly conscious that you can do this only as the result of careful study and meditation. Do not let anybody fool you into believing that you can learn law, and worst of all, that you can practice law, by giving your thoughts to the points decided, and ignoring legal doctrine and reasoning."

—*Joel Prentiss Bishop, Cambridge, Mass. Author of Criminal Law, Divorce, Contract-Law, and Non-Contract Law, etc.*

The above is from a letter from Mr. Bishop to Nat. B. Jones, of San Antonio, Texas, written Mr. Jones, Oct. 25, 1885, when in the practice of the law, at Morristown, Tenn.

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### CONSTITUTION OF THE U. S.

"We speak of our Constitution as the wise organic instrument under whose provisions the nation has moved on to strength and glory; but that Constitution was the handiwork of lawyers. They framed it, and they have interpreted it. Think how we should have drifted, and what a helpless mass of people we should have been, without its grants, limitations and distributions of power. And, in a general way, the same may be said of every State Constitution, and of every statute. It is the brain of the lawyer which fashions them, and his brain that applies and makes them useful. As a general rule, made more conspicuous even by the few brilliant exceptions, the lawyer has been the legislator, the judge and the executive."

—*Address by David J. Brewer, 'The Great Need of the Profession—a Better Education,' at Detroit, Mich., Aug. 27, 1895, Am. Bar Ass'n.*



## JEREMIAH S. BLACK (1810-1883), Pennsylvania

### A DISSENTING OPINION

"The judgment now about to be given is one of death's doings. No one can doubt that if Judge Gibson and Judge Coulter had lived, the plaintiff could not have been thus deprived of his property, and thousands of other men would have been saved from the imminent danger to which they are now exposed of losing the homes they have labored and paid for. But they are dead, and the law which should have protected those sacred rights has died with them. It is a melancholy reflection that the property of a citizen should be held by a tenure so frail. But new lords, new laws is the order of the day. Hereafter, if any man be offered a title which the Supreme Court has decided to be good, let him not buy it if the judges who made the decision are dead; if they are living let him get an insurance on their lives, for ye know not what a day or an hour will bring forth. The majority of this court changes on the average once every nine years, without counting the changes of death and resignation. If each set of judges shall consider themselves at liberty to over-throw the doctrines of their predecessors, our system of jurisprudence (if system it may be called) would be the most fickle, uncertain and vicious that the civilized world ever saw. A French constitution or a South American republic, or a Mexican administration, would be an immortal thing in comparison to the short-lived principles of Pennsylvania law. The rules of property, which ought to be as steadfast as the hills, will become as unstable as the waves. To avoid this great calamity, I know of no resource but that of *stare decisis* (to stand by decided opinions)."—*Jeremiah S. Black, Pa.*

(Justice Samuel F. Miller thought Judge Black the greatest lawyer who appeared before the Supreme Court in his day, and Miller was the ablest judge on the bench every day he was a member of the Supreme Court. Says Savoyard: "Black was a master of invective. There is nothing in Junius to compare with his open letters to Chas. Francis Adams on Seward, and to Henry Wilson on Stanton; in style, in learning in rhetoric, in force, or even in sarcasm and invective. As arguments, they are simply overwhelming; as English Compositions they are priceless classics."—*Dissenting opinion, Hole v. Rittenhouse, 2 Phila. Rep., 417.*

It was an ejectment suit, before the Supreme Court three times.

—*The Author.*

### THE DISSOLUTION OF A CORPORATION

"What the defendant means to do is to execute the plain mandate of the supreme law-making power of the state; to carry into effect an Act of Assembly, passed in regular form. This Act, if it be law at all, is paramount to all other law on the subject, and must be obeyed. If, however, the legislature had no *power* to pass it, then it is wholly void and we must regard it as if the place it occupies on the statute book were, a blank.

"The right of the judiciary to declare a statute void, and to arrest its execution, is one which, in the opinion of the courts, is coupled with responsibilities so grave that it is never to be exercised except in very clear cases; one department of the government is bound to presume that another has acted rightly. The party who wishes us to pronounce a law unconstitutional, takes upon himself the burden of proving, beyond all doubt, that it is so.

"It is also very well settled that no statute is unconstitutional merely because it is wrong in policy or principle. It is not enough to prove that it is contrary to a sound public morality, or injurious to private



rights. Inconsistency with rules of law or principles of equity, will not make it void. Nothing will have that effect but a direct collision between its provisions and those of the federal or state constitution. For this proposition I have no authority or reasons to offer beyond what are already on record in the case of *Sharpless vs. The City of Philadelphia*, 9 Harris, 147.

"The plaintiffs' counsel assert that the Act of 1855, under which the defendant proposes to take the railroad into his possession, impairs the obligation of a contract. The Constitution of the U. S. (Art. 1, Sec. 10), and that of Pennsylvania (Art. IX, Sec. 10), forbid the making of any law impairing the obligation of contracts.

"An act granting corporate privileges to a body of men is, when accepted, a contract between the state and the corporation. It is not worth while now to try whether this doctrine will stand the test of original principles. It is sustained by everything that we are bound to regard as authority, by the decisions of all the courts in the country, by the opinion of the legal profession, and by the general acquiescence of the people. It is not denied by the defendant or his counsel, or by anybody else who has attempted to sustain the action of the legislature in this case. Being a contract, it cannot be rescinded by the act of one party without the consent of the other. A grant of corporate privileges for a special period cannot be resumed by the state within such period. If the charter be without limitations as to time, it is forever irrevocable.

"It does not follow from this that corporations are beyond the reach of public control. When the privileges they enjoy are fraudulently abused, the courts may pronounce them forfeited. In some cases also, the legislature when granting the franchises, reserves to itself the right to revoke them. When the charter contains such stipulation, it is as much a part of the contract as anything else that is in it.

"\*\*\*\*The authority given by the Act of Oct. 1855, to the defendant to take possession of the railroad is asserted by the plaintiffs' counsel to be an act of confiscation—a taking of private property for public use without compensation. If this be true, the injunction ought to be awarded; for no legislature can do such a thing under our constitution. When a corporation is dissolved by a repeal of its charter, the legislature may appoint, or authorize the governor to appoint a person to take charge of its assets for the use of the creditors and stockholders; and this is not confiscation, any more than it is confiscation to appoint an administration to a dead man, or a committee for a lunatic. But money, or goods, or lands, which are or were the private property of a defunct corporation, cannot be arbitrarily seized for the use of the state without compensation paid or provided for. This act, however, takes nothing but the road. Is that private property? Certainly not! It is a public highway, solemnly devoted by law to the public use. When the lands were taken to build it on they were taken for public use; otherwise they could not have been taken at all. It is true the plaintiffs had a right to take tolls, from all who traveled or carried freight on it, according to certain rates fixed in the charter, and it was gone when the charter was repealed. The state may grant to a corporation, or to an individual, the franchise of taking tolls on any highway, opened, or to be opened, whether it be a railroad or river, canal or bridge, turnpike or common road. When the franchise ceases by its own limitation, by forfeiture, or by repeal, the highway is thrown back on the hands of the state, and it becomes her duty, as the sovereign guardian of the public rights and interests, to take care of it. She may renew the franchise, give it to some other person, exercise it herself, or declare the highway open and free to all the people. If the railway itself was the private property of the stockholders, then it remains theirs and they may use it without a charter as other people use their own—run it on their own account—charge what tolls they please—close it or open it when they think proper,



disregard every interest except their own. The repeal of charters on such terms would be courted by every railroad company in the state; for it would have no effect but to emancipate them from the control of law, and convert their limited privileges into broad, unbounded license. On this principle a corporation might be rewarded, but never punished, for misconduct. Repeal of its charter, instead of bringing it to a shameful end, would put 'length of days in its right hand, and in its left riches and honor.' But it is not so. Railroads made by the authority of the Commonwealth upon land taken under her right of eminent domain, and established by her laws as thoroughfares for the commerce that passes through her borders, are her highways. No corporation has any property in them, though corporations may have franchises annexed to and exercisable within them."—*J. S. Black, in 1856.*

The charter of the Erie & N. E. Railroad Co. had been repealed and Mr. Casey appointed to take possession of the property. The Company asked the Supreme Court to enjoin Mr. Casey from doing so. The opinion is a classic in Pennsylvania law; its reasoning, as above, has become a part of its jurisprudence.

### THE OSAGE LAND CASE

"Opinion by Davis. Miller affirmed. Lawrence sustained. Shannon honored. Peck glorified. Justice vindicated. Truth triumphant. Settlers protected. The Lord God Omnipotent reigneth." J. S. Black's telegram to his waiting clients,—the inhabitants of five counties in Kansas, *bona fide* settlers and owners, who had bought and paid for the lands, and were being ousted and ejected from their homes by certain railroad companies, who unjustly claimed the Osage Lands.

### FARMING

"The cultivation of the earth is the only trade which God ever commanded any man to exercise. And it seems to have been a part of the divine economy to surround it with attractions. Our natural organization is fitted for the country and not for the town. The human eye is so formed that it rests with pleasure on green and blue and cannot endure any other color for a long time without injury. Our sense of sight is never so much delighted, because never employed in a manner so congenial to the nature of its organ, as when we look upward into the clear blue heavens, or abroad upon the green earth. When man was entirely blessed he was placed in a garden—not merely a patch for cabbages and potatoes, three perches square and close by the side of a paling fence—but comprehending grounds of vast extent and boundless magnificence, adorned with flowers and enriched with fruits. Hill and dale and fountain, shady walks and sunny slopes, rich fields and verdant meadows, with four great rivers rolling through them, made a landscape such as no eye has ever seen since the fall. It was here that heaven and all happy constellations shed their secret influence on the marriage of our first parents. Imagination has never painted a scene of perfect happiness without similar surroundings. Scenes of Idilian beauty form the principal feature on the heaven of every religion whether true or false. The Elysian fields of the Greek mythology, and the Paradise of Mohamet are ready examples. The land which flowed with milk and honey was, to the Jew a type of that better country to which he should go after his journey through the wilderness of life was closed. And many a Christian, when his soul recoiled from the dark stream of death, has felt his courage revived by the assurance that sweet fields beyond the swelling flood, stand dressed in *living green*.

Other occupations are followed for the wealth and fame they produce, but agriculture is crowded with amateurs, who pursue it for its own sake



and thousands feel the same desire whose narrow means forbid them to indulge their wishes. When Cincinnatus abandoned the leadership of the mightiest empire in the world to hurry home and finish his plowing, and when Washington retired from the Presidency to cultivate his farm, they both yielded to an inclination as common as it is natural"

—*To an Agricultural Society.*

### TRIAL BY JURY

"I do not assert that the jury trial is an infallible mode of ascertaining truth. Like everything human, it has its imperfections. I only say, that it is the best protection for innocence and the surest mode of punishing guilt that has yet been discovered. It has borne the test of a longer experience, and borne it better, than any other legal institution that ever existed among men. England owes more of her freedom, her grandeur, and her prosperity, to that than to all other causes put together. It has had the approbation not only of those who lived under it, but of great thinkers who looked at it calmly from a distance, and judged it impartially. Montesquieu and De Tocqueville speak of it with an admiration as rapturous as Coke and Blackstone. Within the present century, the most hightened states of continental Europe have transplanted it into their countries, and no people ever adopted it once were afterwards willing to part with it. It was only in 1830 that an interference with it in Belgium provoked a successful insurrection which permanently divided one kingdom into two. In the same year, the revolution of the Barricades gave the right of trial by jury to every Frenchman."

### REPLY TO WAYNE MACVEAGH

"My friend from Dauphin (Mr. Mac Veagh) spoke of legislation under the figure of a stream, which, he said, ought always to flow with crystal water. It is true that the Legislature is the fountain from which the current of our social and political life must run, or we must bear no life; but as it now is, we keep it merely as a cistern for foul toads to knot and gender in. He has described the tree of liberty, as his poetic fancy sees it, in the good time coming, when weary men shall rest under its shade, and singing birds shall inhabit its branches and make most agreeable music. But what is the condition of that tree now? Weary men do indeed rest under it, but they rest in their unrest, and the longer they remain there, the more weary they become. And the birds—it is not the wood-lark, nor the thrush, nor the nightingale, nor any of the musical tribe, that inhabit the branches of our trees. The foulest birds that wing the air have made it their roosting-place, and their obscene droppings cover all the plains about them—the kite, with his beak always sharpened for some crude repast; the vulture every ready to swoop upon his prey; the buzzard, digesting his filthy meal and watching for the moment when he can gorge himself again upon the prostrate carcass of the commonwealth. And the raven is hoarse that sits there croaking despair to all who approach for any clean or honest purpose."

—*In Constitutional Convention, which adopted the Constitution of Pennsylvania of 1873.*

### PATRIOTISM

"Patriotism in its true sense, does indeed dignify and adorn human nature. It is an exalted and comprehensive species of charity, which hides a multitude of sins. The patriotism of Washington, which laid deep the foundation of free institutions and set the noble example of implicit obedience to the laws; the patriotism of John Hampden, who



voluntarily devoted his fortune and his life to the maintenance of legal justice; that patriotism of Cato, who resisted the destructive madness of his countrymen and greatly fell with a falling state; the patriotism of Daniel O'Connell, who spent his time and talents in constant efforts to relieve his people from the galling yoke of clerical oppression; the patriotism of the elder Pitt, who speaking in the cause of universal liberty, loudly rejoiced that America, had resisted the exactions of a tyrannical Parliament—to such patriotism some errors may be pardoned. When men like these are found to have committed a fault, it is well that history should deal with it tenderly—

‘And sad as angels for the good man’s sin,  
Weep to record and blush to give it in.’ ”

—*From Letters to Henry Wilson, Black’s “Essays and Speeches,”*  
626.

“Black’s invective has had no parallel, in my judgment, in American forensic literature. In this field his command of the English language has not been excelled on either side of the sea. He was as much superior to Junius, as an equal skill in the language, combined with a vastly superior knowledge, could make him, to say nothing of the superior manhood which made him sign his name to even the bitterest of his philippics.”—*Senator Zebulon Vance of N. C.*

## STATE RIGHTS

“The Union is necessarily perpetual. No State can lawfully withdraw or be expelled from it. The Federal Constitution is as much a part of the Constitution of every State as if it had been textually inserted therein. The Federal Government is sovereign within its own sphere and acts directly upon the individual citizen of every State. Within these limits its coercive power is ample to defend itself. It can suppress insurrection, fight battles, conquer armies, disperse hostile combinations, and punish any and all of its enemies. It can meet, repel and subdue all those who rise against it.”

—*Opinion of Jeremiah S. Black, while Secretary of State to Pres. Buchanan, Dec. 17, 1860.*

## NULLIFICATION

“The truth is, that the exclusive authority of the Federal judges to decide all cases arising under the Federal laws was the lion in the path of nullification. It saved the country from dismemberment then, and no one knows the day nor the hour when it may be necessary to invoke it again for the same purpose. When it ceases to be maintained, the Union of the States will become a rope of sand. The highest tribunals of the States (that of Wisconsin always excepted) have uniformly refused to adopt this wild notion of their power over the Federal laws. It was decidedly repudiated by the Supreme Court of Massachusetts, in Simm’s case; by that of New York, in Prime’s case; and by that of Pennsylvania in Williamson’s case. It has been exploded long before by Judge Cheves, of South Carolina, in an opinion of singular brevity, clearness, and force.”

—*Jeremiah S. Black in argument before U. S. Supreme Court in*  
*Ableman v. Booth, and the U. S. v. Booth.*

## SIR WILLIAM BLACKSTONE (1723-1780), England

### LAWYER'S FAREWELL TO HIS MUSE

"But now the pleasing dream is o'er—  
These scenes must charm me now no more;  
Lost to the field and torn from you,  
Farewell! a long, a last adieu! \* \* \*

Then welcome business, welcome strife,  
Welcome the cares, the eriminal life,  
The visage wan, the purblind sight,  
The toil by day, the lamp by night,  
The tedious forms, the solemn prate,  
The pert dispute, the dull debate,  
The drowsy bench, the babbling hall—  
For thee, fair *Justice*, welcome all!

Thus, though my noon of life be past,  
Yet let my setting sun at last  
Find out the still, the rural cell  
Where sage retirement loves to dwell!  
There let me taste the home-felt bliss  
Of innocence and inward peace;  
Untainted by the guilty bride,  
Uncursed amid the harpy tribe;  
No orphan's cry to wound my ear  
My honor and my conscience clear;  
Thus may I calmly meet my end,  
Thus to the grave in peace descend!"

The above was written when Blackstone abandoned literary and scientific pursuits, to which he had applied himself almost exclusively, and this was when he was but eighteen. At twenty-three, he was made bachelor of civil law, and for years made little progress; at thirty-one, he was engaged as counsel in the county election, at Oxford; at thirty-five, became Vinerian professor, at Oxford, and gave sixty lectures a year, on the Common Law of England, for which he was paid \$1,000 yearly; with the distinction these lectures gave him, he returned to London, at thirty-six, resuming his practice; in 1765, when forty-two, appeared his first volume on the Commentaries on the Laws of England. It passed through eight editions, during his life, and with his lectures made him \$80,000.—*Author*.

### THE OBJECT OF SOCIETY

"The great end of society is to protect the weakness of individuals, by the united strength of the community."—*Commentaries*, 262.

### GOVERNMENT

"Man was formed for society; and, as is demonstrated by the writers on the subject, is neither capable of living alone, nor indeed has the courage to do it. However, it is impossible for the whole race of mankind to be united in one great society, they must necessarily divide into many, and form separate states, commonwealths, and nations, entirely independent of each other, and yet liable to a natural intercourse."

—*Commentaries: Of the Nature of Laws in General*.



## LAW

"Law, in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus, we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action which is prescribed by some superior, and which the inferior is bound to obey."

—*Commentaries: Of the Nature of Laws in General.*

THE LAW SHOULD BE STUDIED AS PART OF ONE'S  
EDUCATION

"But that a science, which distinguishes the criterions of right and wrong; which teaches to establish the one, and prevent, punish, or redress the other; which employs in its theory the noblest faculties of the soul, and exerts in its practice the cardinal virtues of the heart; a science, which is universal in its use and extent, accommodated to each individual, yet comprehending the whole community; that a science like this should ever have been deemed unnecessary to be studied in an university, is a matter of astonishment and concern."

—*Introduction to the Commentaries, Sec. 1.*

## IN WHOM GOVERNMENT SHOULD BE REPOSED

"In general, all mankind will agree that government should be reposed in such persons in whom these qualities are most likely to be found, the perfection of which is among the attributes of Him who is emphatically styled the Supreme Being; the three great requisites, I mean, of wisdom, of goodness, and of power—wisdom to discern the real interest of the community; goodness, to endeavor always to pursue that real interest; and strength, or power, to carry this knowledge and intention into action. These are the natural foundations of sovereignty, and these are the requisites that ought to be found in every well-considered frame of government."—*Commentaries: Of the Nature of Laws in General.*

## THOMAS JEFFERSON ON HIS COMMENTARIES

"Though the most eloquent and best digested of our catalogue, has been perverted more than all other to the degeneracy of legal science. A student finds there a smattering of everything, and his indolence easily persuades him that if he understands that book he is master of the whole body of the law."—*To Judge Tyler, 1812.*

## AUSTIN'S OPINION

"The arrangement is a slavish and blundering copy of Sir Matthew Hale's; in the whole work there is not a single particle of original discriminating thought; its flattery of English institutions is a 'paltry but effectual artifice' which has made it popular."

## LORD ELLENBOROUGH'S TESTIMONY

"He made himself a learned lawyer by writing the Commentaries."

## SIR WILLIAM JONES' OPINION

"His Commentaries are the most correct and beautiful that were ever exhibited of any human science."



## LORD AVONMORE'S PANEGYRIC

"He it was who first gave to the law the air of a science. He found it a skeleton, and clothed it with life, color, and complexion; he embraced the cold statue, and by his touch it grew into youth, health and beauty."

HIS COMMENTARIES PASSED THROUGH EIGHT EDITIONS  
DURING HIS LIFE

The first volume of his Commentaries was published in 1765. During the next fifteen years, as he died in 1780, the work passed through eight editions, and with his lectures made him \$80,000. The completed work appeared in 1769. At that time there were 160 offenses punishable with death, in England.

## JEREMY BENTHAM ON THE COMMENTARIES

While Bentham's strictures on the Commentaries, and especially on 'the antipathy to reformation,' or perhaps, more accurately speaking, the desire which pervades the work to support the system of English law, upon grounds and reasons insufficient in themselves, yet he says as to their style:

"He it is, in short, who, first of all institutional writers, has taught jurisprudence to speak the language of the scholar and the gentleman; put a polish upon that rugged science; cleansed her from the soot and cobwebs of the office, and if he has not enriched her with that precision which is drawn only from the sterling treasury of the sciences, he decked her out, however, to advantage, from the toilet of classic erudition; enlivened her with metaphors and allusions; and sent her abroad in some measure to entertain, the most miscellaneous and even the most fastidious societies."

## CHARLES JAMES FOX'S CRITICISM

Upon the style of the Commentaries, Mr. Fox, passed a high panegyric, but as a constitutional writer he took issue, and said:

"His purity of style I particularly admire. He was distinguished as much for simplicity and strength as any writer in the English language. He was perfectly free from all gallicisms and ridiculous affectations, for which so many of our modern authors and orators are so remarkable. Upon this ground, therefore, I esteem Judge Blackstone; but as a constitutional writer he is by no means an object of my esteem; and for this amongst other reasons, that he asserts the latter years of the reign of Charles the Second (I mean those which followed the enactment of the habeas corpus act) to have been the most constitutional period to be found in our history, not excepting any period that followed. Now it would be inconsistent with all the principles which I have ever held, to regard such a writer as a constitutional authority, much less to look up to him as an oracle."—*Cobbett's Parl. Deb.*, Vol. 6, 314.

## ON GOVERNMENT

"The principle use of government is to direct the united strength of the community in the best and most effectual manner to protect the weakness of individuals."—*Commentaries*, 262.



LOGAN E. BLECKLEY (1827- ), Georgia

### SCRUTINIZING A DECISION

"My trouble is, to become fully persuaded that I know. I reconsider, revise, scrutinize, revise the scrutiny and scrutinize the revision, and then I discover the thing is all wrong. My colleagues are called; we reconsider and decide the other way. Then I am satisfied; for when I know the law is not on one side, it must be on the other."

### TRUSTS

"Trusts are children of equity; and in a court of equity they are at home, under the family roof-tree, and around the hearth of their ancestors."

—*In Kupperman v. McGehee*, 63 Ga., 250.

### PREACHING—THE HOG AND HOMINY OF RELIGION

"If any debt ought to be paid, it is one contracted for the health of souls. Simple and exact justice in the relation, is the hog and hominy, the bacon and beans of morality, public and private."

Judge Beckley, therefore, ordered a Baptist Church to be sold to pay the preacher's salary.

### MODESTY AND APPRECIATION

"My thanks, present and everlasting, are due you for a copy of the *de luxe* edition of the engravings of 'Eminent American, English and Canadian Lawyers.' The work is a real treasure, and I shall prize it accordingly. It is a piece of music in light and shadow, with only one discordant note, that note being my own portrait; which is out of place in a composition of so high an order. My self-love is flattered, but my sober sense demurs. I feel the awkward embarrassment of a rustic in elegant and refined company."—*To the author of the engravings, in which his portrait is one.*

Says Irving Browne: "When it comes to wit, of the sort that illuminates the subject, Chief Justice Bleckley is easily chief among all American judges."

### IN THE MATTER OF REST

BECKLEY, J.—

“Rest for the hand and brow and breast  
For fingers, heart and brain!  
Rest and peace! a long release  
From labor and from pain;  
Pain of doubt, fatigue, despair;  
Pain of darkness, everywhere,  
And seeking light in vain.

Peace and rest! are they the best  
For mortals here below?  
In soft repose from work and woes  
A bliss for men to know?  
A bliss of time is bliss of toil;  
No bill but this, from sin and soil,  
Does God permit to grow.”

This was drawn by Judge Bleckley, upon his retirement, after four years as Associate Justice of the Supreme Court, of Georgia, in 1880. It is in the form of a regular judicial decree. By order of the Court, the lines were spread on the minutes. Judge Bleckley, was returned to the Supreme Bench of Georgia, as Chief Justice, in 1887, and held the position until death.

### PROCEDURE

"Some meritorious cases, indeed many, are lost in passing through the justice of procedure; but they all are justly lost, provided the rules of procedure have been correctly applied to them. That a just debt is unrecognized, a just title defeated, or a guilty man acquitted, is no evidence that justice has not been done by the Court or jury. It may be the highest evidence that justice has been done, for it is perfectly just not to uphold a just title, not to convict a guilty man, if the debt, or the title, or the guilt be not verified. It is unjust to do justice by doing injustice. A discovery cannot be made by an unjust search. An end not attainable by just means is not attainable at all; ethically, it is an impossible end. Courts cannot do justice of substance except by and through justice of procedure. They must not reach justice of substance by violating justice of procedure. They must realize both, if they can, but if either has to fall it must be justice of substance, for what justice of procedure Courts cannot know, nor be made to know, what justice of substance is, or which party ought to prevail."

—*From 'Truth at the Bar', p. 10.*

### WHAT A LAWYER SHOULD BE

"Some people think that a lawyer's business is to make white black; but his real business is to make white white in spite of the stained and soiled condition which renders its true color questionable. He is simply an intellectual washing-machine."

—*From letter to Nat. B. Jones, formerly of Morristown, Tenn., later of San Antonio, Texas, as told the author.*

### BARBER NOT LIABLE AS BAILEE

"It hath never happened from the earliest times to the present, that barbers, who are an excellent order of small craftsmen, serving their customers for a small fee and entertaining them the while with the small gossip of the town or village, have been held responsible for a mistake made by one customer whereby he taketh the hat of another from the common rack or hanging place, being in the same room in which customers sit to be shaved. The reason is that there is no complete bailment of the hat. The barber hath no complete custody thereof, and the fee for shaving is too small to compensate him for keeping a servant to watch it, and at the same time shave the owner. Moreover, the value of an ordinary gentleman's hat is so much, in proportion to the fee for shaving, that to make the barber an insurer against such mistakes of his customers would be unreasonable. The loss of one hat would absorb his earnings for a whole day; perhaps many days. The barber is a craftsman laboring for wages, not a capitalist conducting a business of trade or trust."

—*Dissenting opinion in Diberto v. Harris, 23 S. E. Rep., 112.*



W. E. BORAH (1865- ), Idaho

### THE CHRISTIAN RELIGION

"I was reared by Presbyterian parents. The religious strain of Calvin was present in our household. About the time I arrived at the age when every boy knows just how the world was made and how man accidentally arrived upon earth, I secured from some source the 'Mistakes of Moses.' I was perfectly fascinated with the story. I soon found out that this man of whom I had heard so much at family prayers was a worse man than Darrow's Orchard. He had killed an Egyptian and hidden him in the sand. He had done a great many other things unnecessary to mention here. I was so glad to find that saints were human. One day, while sitting under a tree reading, when I ought to have been pulling weeds out of the corn, father came along and asked what I was reading. I closed the book, and being in a rather close place, like Pettibone, I concluded I would keep still, so I answered not. Father, thinking my silence under such circumstances was an admission of guilt, reached over, took possession of the book, and I did not read any more out of that volume. Some other things happened which it is also unnecessary to mention. I went my way disconsolate. I had no Ingersoll, and the intellectual heavens were without a star. Finally I secured the life of Napoleon Bonaparte, and read it. I came to the conclusion that Napoleon was a greater man than Ingersoll,—the greatest genius in war or statesmanship that ever lived. I came to the history of his Egyptian campaign. I read how he took with him on that trip from Paris, a number of philosophers, savants from the salons of Paris,—learned men, wise men,—men who were teaching in that day, as some would vainly teach now, that there is nothing higher or more divine than the impulses and emotions of the human heart, nothing greater or more godlike than the human intellect; men who taught that there was no difference, as my eloquent friend now says, between the unlettered barbarian muttering his unmeaning words at the foot of a black idol, and the jubilant soul looking up to the God on Calvary, asking for guidance and direction. I read how, one night, these philosophers sat upon the deck of the ship and discussed, in their puny way, the mistakes of the Infinite, how they finally concluded there was no such thing as religion, no God, nothing higher than man. At last they turned to Napoleon for an opinion, who, pointing to the firmament above said 'Tell me who made that firmament, and I will then discuss this matter with you.' This was a revelation to me. Skepticism and agnosticism were things of the past. And I say to you to-night that I am not a religionist, neither am I a hypocrite, but it is too late in this, the morning of the twentieth century, to write upon the divine brow of the One who died on Calvary, 'Impostor'; too late to write above that bowed head, 'False Prophet.' While some may not know, millions do know, that their Redeemer liveth. It is too late to argue against the teachings of Him who said: 'This day thou shalt be with Me in Paradise!'"

—Senator W. E. Borah, in his reply to Clarence Darrow, who was defending William D. Haywood, for the murder of ex-Governor Stuenenberg, of Idaho, Dec. 30, 1905. Borah was for the prosecution. (For Darrow's argument, See 'Darrow'.)



## ELIAS BOUDINOT (1740-1821), Pennsylvania

### TRIBUTE TO AMERICAN WOMANHOOD

"To whom are we more indebted for the origin of our present happiness than to your delicate and discerning sex? In vain did Columbus, our great founder and discoverer after settling the principles of his sound philosophy, apply to the wise men of his country. In vain did he solicit, in strains of the most suppliant humiliation, the different thrones of Europe, when kings considered themselves as God's vicegerents here below; despised by the ignorant—traded by the malevolent—contemned by the great—laughed at by the pretended philosophers—and trifled with by the arrogance of ministers and their hirelings; all his hopes and those of a New World had, at last, sunk in despair, and we, this day, might have mingled our fate with the slaves of the Old World, had not the penetrating wisdom and persevering magnanimity of the fair, but undaunted Isabella, the ornament of your sex, and the jealousy of ours, saved this Western World from the oblivion of more than five thousand years. Did she employ the excess of useless treasures in this happy adventure?

"No! after the refusal of her husband—despising the appendages of brilliant royalty, when compared with the general good of mankind, her enlarged mind, incapable of being confined by the shackles of the age, found a resource in her costly jewels, which she freely offered as a pledge to accomplish the glorious discovery of the fourth quarter of the globe!

"To your sex, then, ladies, are we obliged to yield the palm; had this great event depended altogether on our sex, it is not easy to guess what our united fate had been at this moment. Instead of our present agreeable employment, we might have been hewers of wood and drawers of water to some mighty *Pharaoh*, whose tender mercies would have been cruelty. Your right, then, my fair auditory, to a larger portion of the general joy, must be acknowledged to be of a superior kind."

The above was spoken in 1783—the last year of the Revolution. Boudinot was a statesman and philosopher, born in Philadelphia, Pa., studied law under Richard Stockton and practiced in New Jersey; was President of the Continental Congress, 1782-4; member House of Representatives of U. S. from New Jersey, 1789-95. Director mint, 1795-1805; founded the American Bible Society; one of his books, "A Star of the West," (1816) is an effort to identify North American Indians with the Lost Tribes of Israel.

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### JAMES KENT

"As a judge and author, he will not suffer when compared with the greatest names which have adorned the English law. Higher praise is not possible to give. \* \* \* Simple as a child in his tastes and habits throughout his tranquil and useful life; more than any other judge the Creator of the equity system of this Country; the author of Commentaries which, in accuracy and learning, in eloquence, purity and vigor of style rival those of Sir William Blackstone. His name is admired, his writings prized and his judgments at law and in equity respected in every quarter of the globe, nowhere more than in England, where in its widening conquest the English language of freedom has carried the English law."

—*Jno. F. Dillon, "Laws and Jurisprudence of England and America,"* 379.



LUTHER BRADISH, New York

THE DOCTRINE OF *Stare Decisis*

"The people, in forming the organic law of the government of this State, very wisely foresaw that in its action and progress, questions of interpretation in the settlement of legal principles, and of their application, would frequently arise; and thence the necessity of constituting some tribunal with general appellate and supervisory powers, whose decisions should be final and conclusively settle and declare the law. The law was supposed to have been accomplished in the organization of this court. Heretofore, this court, under the Constitution, has been looked to by the people as the tribunal of the last resort in the State; and it has hitherto been supposed, that when this court had decided a case upon its merits, such decision not only determined the rights of the parties litigant in that particular case, but that it also settled the principles involved in it, as permanent rules of law, universally applicable in all future cases embracing similiar facts, and involving the same or analogous principles. These decisions thus became at once public law, measures of private right, and landmarks of property. They determined the rights of persons and things. Parties entered into contracts with each other with reference to them, as to the declared and established law; law equally binding upon the courts and the people. But the doctrine recently put forth would at once overturn this whole body of law founded upon the adjudications of this court, built up as it has been by the long continued and arduous labors, grown venerable with years, and interwoven as it has become with the interests, the habits, and the opinions of the people. Under this new doctrine all would be unsettled—nothing established. Like the ever returning but never ending labors of the fabled Sisyphus, this court, in disregard to the maxim of '*stare decisis*', would, in each recurring case, have to enter upon its examination and decision as if it all were new, without any aid from the experience of the past, or the benefit of any established principle or settled law. Each case with its decision being thus limited as law to itself alone, would in turn pass away and be forgotten, leaving behind it no record of principle established, or light to guide, or rule to govern the future."

—*In Hanford v. Archer*, 4 Hill, 321.

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FULLERTON'S SKILLFUL CROSS-EXAMINATION

"During the cross-examination of Henry Ward Beecher, in the celebrated Beecher-Tilton case, and after Mr. Beecher had denied his alleged intimacy with Mr. Tilton's wife, Judge Fullerton read a passage from one of Mr. Beecher's sermons to the effect that if a person commits a great sin, the exposure of which would cause misery to others, such a person would not be justified in confessing it, merely to relieve his own conscience. Fullerton then looked straight into Mr. Beecher's eyes, and said: 'Do you still consider that sound doctrine?' Mr. Beecher replied, 'I do.' The inference a juryman might draw from this question and answer would constitute a subtle argument for that branch of the case."

—*William Fullerton* (1818- ), *New York*.

"A cross-examiner equalled by few and excelled by none."

Graduated with John K. Porter at Union College, and afterwards sat on the N. Y. Court of Appeals with Porter; removed to N. Y. in '52, and formed a partnership with Chas. O'Connor.



## JOSEPH PHILO BRADLEY (1813-1892), New Jersey

### THE LAW

"The law is a science of principles, by which civil society is regulated and held together, by which right is eliminated and enforced, and wrong is detected and punished. Unless these principles are drawn from the books which a student reads, and deposited in his mind and heart, his much reading will be but a dry and unprofitable business. On the contrary, if these principles are discovered beneath the husks of text-books and reports, if they are extracted, mastered and retained, it will not be so much the number of the books studied, as the success with which this digesting and assimilating process is pursued in studying them, which will make the great and successful lawyer."

—*Justice Bradley, on the Life and Character of Wm. L. Dayton, 1865.*

### JOHN G. JOHNSON'S ESTIMATE

"No lawyer no matter how thorough his research in any particular case, was able to present to Judge Bradley an authority of which he was ignorant, or a principle of law which was new to him."

—*Memorial Exercises, in U. S. Supreme Court.*

### GEORGE F. HOAR'S TRIBUTE

"In my opinion, Mr. Justice Bradley, has had no superior, save Marshall alone on that Court (the Supreme Court of the U. S.) in every quality of a great judge. I doubt, if he has had, on the whole, an equal, save Marshall alone."—*1 Autobiography of Seventy Years, 287.*

### WM. DRAPER LEWIS, ON HIS STANDING AT DEATH

"At his death, the bench, bar and country lost one, who, for the clearness of his thought and for the thoroughness of his acquaintance with all subjects connected with his profession, was perhaps, without a superior in the history of the judiciary."

### HORACE STERN'S CHARACTERIZATION

"In manner Bradley was kindly and democratic, and not nearly as stern or imperious as was Miller, but grave and sedate, inclined sometimes, it is true, to petulance and to demonstrations of an irascible temper, but quickly repentant of any offense created by hasty word or action. His dignity was the dignity of simplicity, his strength, the strength of quiet power. Men learned to trust him, both as a lawyer and as a judge, for his preparation was thorough, his equipment complete. He could well afford to scorn attempts at displays of brilliancy; it is the volume and not the ruffled surface of the ocean that makes it the most potent force of nature. And while American public life has produced men of remarkable ability, scholarship has not been so common a virtue of our statesmen that Bradley's fame is apt to be dimmed by comparisons. Many as were his other attainments, his legal erudition alone would entitle him to pre-eminent rank in that long line of jurists who have made the Supreme Court of the United States, the greatest judicial tribunal in the world."—*6 'Great American Lawyers,' 404.*



## THE ACCOMPLISHED LAWYER

"In order to be an accomplished lawyer, it is necessary, besides having a knowledge of law, to be an accomplished man, graced with at least a general knowledge of history, of science, of philosophy, of the useful arts, of the modes of business, and of everything that concerns the well being and intercourse of men in society. He ought to be a man of large understanding; he must be a man of large acquirements and rich in general information; for he is a priest of the law, which is the bond and support of civil society, and which extends to and regulates every relation of one man to another in that society, and every transaction that takes place in it."—*From Address to Law Dept., University of Pennsylvania, 1884.*

## JUDICIAL INSIGHT

"Some men seem to be constituted by nature to be masters of judicial analysis and insight. Such were Papineau, Sir Matthew Hale, and Lord Mansfield, each in his particular province. Such was Marshall in his. They seemed to handle judicial questions as the great Euclid did a mathematical proposition,—with giant ease."—*Said by Justice Bradley.*

## ONE BOOK

"Perfect familiarity, perfect mastery, of any one good book is a mine of intellectual wealth, not merely,—not so much the matter which is thus made one's own, as for the vocabulary, the diction, the style and the manner of expression which is mastered and indelibly fixed on the mind."

—*To the Law School, University of Pa., 1884.*

## BLACKSTONE

"There is nothing to compare with the Commentaries of Sir William Blackstone, in completeness of scope, purity and elegance of diction, and appositeness, if not always absolute accuracy, of definition and statement."

## GREAT STUDENT,—LARGE LIBRARY

He read nearly everything in his uncle's library, while at college, completed a course in theology, but before graduation gave up the idea, and studied law. His law library of over 5,000 volumes, and his general library, still larger, were both thoroughly mastered. He was a reader of novels and extremely fond of poetry; made a special study of Shakespeare. In history, biography and genealogy he seemed to know something of almost everybody that was ever heard of.—*Author.*

## THE LAWS OF THE UNITED STATES

"The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and within its jurisdiction, a paramount sovereignty. Every citizen of a State is a subject of two distinct sovereignties, having concurrent jurisdiction in the State,—concurrent as to place and persons, though distinct as to subject matter.\*\*\*If an Act of Congress gives a penalty to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some Act of Congress, by a proper action in a State court. The fact that a State court derives its existence and functions



from the State laws is no reason why it should not afford relief; because it is subject also to the laws of the United States, and is just as much bound to recognize the State laws. The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent. The disposition to regard the laws of the United States as emanating from a foreign jurisdiction is founded on erroneous views of the nature and relations of the State and Federal Governments. It is often the cause of the consequence of an unjustifiable jealousy of the United States government, which has been the occasion of disastrous evils to the country."

—*From opinion in Claflin v. Houseman, 93 U. S. Rep., 130, (1876).*

### FRANK W. HACKETT'S ESTIMATE

"No man ever sat upon the bench of the Supreme Court of the United States who, in the extent and variety of his knowledge, has surpassed Mr. Justice Bradley. He was a very learned man."

—*Frank W. Hackett, of the Washington, D. C. Bar.*

### TAKEN FOR JANITOR IN PHILADELPHIA

As Bradley was a small, insignificant looking man, when he went to Philadelphia, as one of the Supreme Bench, to hold court, in that circuit, he was accosted, upon entering the building, by one of the janitors, who, taking him for a casual visitor, assumed to show him over the various floors. Coming to the Judge's Chambers, Bradley inquired what room it was. "Oh, this is for the Judges, but they haven't arrived yet. Laying aside his hat and umbrella, the Judge quietly remarked,—“One of them has!"

### DRAWN ON JUSTICE'S JURY

When he went to Washington to take his place as Justice of the United States Supreme Court, he was walking along Pennsylvania Avenue, when a constable looking for a jurymen, summoned him as one of the six. Mr. Justice Bradley went almost to the Justice's Court before asking the constable if he was in the habit of putting Justices of the Supreme Court of the U. S., in his jury-box. Justice Bradley, afterwards said, he had a good mind to go into court and carry the joke still further.

### GAVE UP \$1,400, RATHER THAN ADMIT HIS NEGLIGENCE AS A LAWYER

When busy writing a brief, during his practice at the Newark, N. J. Bar, a client bustled into his office, and said he wanted that \$1,500 note protested, laying it down; that the maker was insolvent, but the indorser was good, and he wanted to hold him. "All right," said Bradley, who was a man of a few words, "I'll 'tend to it." With this, he shoved the note under his desk-pad, and went on with his work. In a few days, his client, —the owner of the note, called to see if Bradley had collected the money, as he knew as soon as the surety was notified he would come in and pay. "Oh, yes," said Bradley, at the same time taking out his check-book, and writing him a check for \$1,400,—the amount of the note, less his fee of \$100. The fact was, the note had been forgotten, and was then lying under the desk-pad, where Bradley had put it; but he would not admit his carelessness, and thus paid \$1,400 for his forgetfulness.

—*This incident was told the compiler of this work, by a Newark, N. J. lawyer, who at the time was reading law in Mr. Bradley's office.*



## BROKE BOOK-CASE

Judge Bradley had a violent temper, and although a consistent church-member, would swear at inanimate things when enraged. On one occasion, upon going to his office to get some books to take to Trenton, whither he was going to argue a case in the Supreme Court, found he had changed his pantaloons, and left his book-case key behind. Says the young lawyer, who was then reading law in his office:—

“He was so much exasperated that he took an old hatchet, broke in the doors, saying as was his habit,—‘There, d——n you,—I’ll teach you to be locked.’ ”

## SCIENTIFIC AND BIBLICAL SCHOLAR

He applied himself to scientific investigation, to problems of the higher mathematics, astronomy, physics, and mechanics. Was thoroughly familiar with botany, chemistry, geology, and kindred sciences, and he kept pace with the new discoveries being made in each of them.

He studied foreign languages, reading many great authors in the originals. Became one of the most accomplished Biblical scholars in the country. Always kept beside him a copy of the New Testament in the original Greek, which at church he never failed to consult. He delivered in various places, just before coming to the bench, lectures upon the English Bible.

## CUT INTO SHREDS A NEW PAIR OF BREECHES

Upon one occasion, (by the way, he was very unconcerned about his dress), he was about to go before an important tribunal, in an appealed case, and Mrs. Bradley persuaded him to change his pantaloons, which were well worn at the knees and in the seat, for a new pair, which she had gotten unbeknown to him. This delayed his start, but he hurried to the station, only to find he had been left. When he returned to the house he took off the pants, took out his knife and cut them into shreds, saying, as he did so:—

“There, d——n you, I’ll teach you to make me miss my train!”

—Told the compiler, by a N. J. lawyer, who read law with Bradley.

## SOME IMPORTANT CASES

Among his most important trials, while at the bar, were the Meeker will case, the Passaic bridge case, the New Jersey Zinc, and the Belvidere Land cases; the Hardin and Donnelly murder cases. His intellectual distinction was thoroughness,—was always at work, and said,—‘All I ever did was done by dogged and unyielding perseverance.’ He had the three elements of greatness,—wisdom, integrity of purpose, and simplicity. He was learned in the common law, equity, admiralty, civil and patent law, and the jurisprudence of the world,—ancient and modern; was proficient in mathematics, the natural sciences, and in astronomy,—making abstruse calculations for forty centuries in the future, and his general attainments covered a wide range. He was pronounced by one of his associates,—“The most learned man I ever knew;” by George Harding, himself an expert patent lawyer,—“Unsurpassed as a patent lawyer, if ever equalled;” by Cortlandt Parker, a Newark, N. J. lawyer, who had frequently locked horns with him,—“The most deeply informed man I ever met, on subjects foreign to his profession.” His decisions, found scattered through sixty volumes, 475 in number, with 93 dissents, are couched in pure English, vigorous but elegant.



## JAMES T. BRADY (1815-1869), New York

### JAS. T. BRADY CARED FOR THE GOOD OPINION OF HIS FELLOW-LAWYERS

"I do honor greatness, genius and achievements, but I honor those qualities in a man's nature which show that while he holds a proper relation to the Deity, he has also a just estimate of his fellow-men and a kindly feeling towards them. I would rather have it said of me after death, by my brethren of the bar, that they were sorry I left their companionship, than to be spoken of in the highest strains of gifted panegyric."

—*Jas. T. Brady*,—*At a meeting of the Bar of N. Y. in memory of Daniel S. Dickinson, in 1866.*

### SHAKESPEARE

"Perhaps no author blended the passions of pity and terror with more force and originality than Shakespeare—pity, not only for youth, innocence, nobility of character, and virtue, as in Imogene, Desdemona, Brutus, Coriolanus—or for insignificant persons, like the Duke of Clarence, or profligate or worthless ones like Cardinal Wolsey,—terror in all its forms, from the madness of Lear, and the ghost of Hamlet, up to the dreams of Richard and Lady Macbeth. But perhaps the most miraculous of all his representations are those in which he has portrayed the wanderings of a disordered intellect, and especially that species of distraction which arises from the excess of sorrow."

—*James T. Brady in a letter to a friend.*

Mr. Brady said to have defended 51 men for their lives, during his 34 years' practice, saving all from the gallows.

JAS. T. BRADY: "Many of Brady's noblest productions were not unlike the Corinthian pillar, in which the strength of the column is lost sight of in the symmetry of its proportions and the beauty of its decorations."—*Anon.*

### THE STUDY OF THE LAW

"The study of the law is like scaling the Alps—you must adopt the indomitable energy of Hannibal, and your ascent will be easy; of all things beware of half-knowledge—it begets pedantry and conceit; it was what the poet meant when he said, 'A little learning is a dangerous thing.' Make your learning practical, for a bookworm is a mere driveler—a gossamer. There is a deal of legal learning that is dry, cold, revolting; but it is an old feudal castle, in perfect preservation, which the legal architect who aspires to the first honors of his profession, will delight to explore, and learn all the uses to which the various parts are to be put, and thus he will better understand and relish the progressive improvements of the science in modern times."

—*Thos. J. Brady, father of Jas. T. Brady.*

Brady's father was noted for his intellectual acquirements, and as one of the most accomplished scholars in New York City. The above was written to Jas. T. Brady, his son.

### BRADY AND O'CONOR CONTRASTED

"Among the New York lawyers of Irish parents, but American born, the most conspicuous were Charles O'Connor and James T. Brady; both alike in being lawyers, but wholly unlike in their chief characteristics



and personal appearance. Mr. O'Connor was tall, well proportioned, with little remarkable in his general appearance, except that his countenance usually wore an extremely thoughtful expression. Mr. Brady was short, rather small, well proportioned, except his head, which was very large and out of proportion to the rest of his figure. On account of the great size of his head, Mr. Brady could only wear a hat made especially for him. Any one who, for the first time, saw O'Connor engaged in an argument or trial would recognize him as a man of decided ability, deep study, thoroughly prepared for the work he had in hand, wholly absorbed in his case, but otherwise not presenting a very imposing appearance. One who first saw Brady thus engaged would be struck with his dignified and commanding appearance; attention would be at once riveted upon his massive head. He possessed a striking figure, which would command attention anywhere. His serene and captivating manner would indicate anxiety as to the result, and determination to do everything in human, or legal power to achieve a victory for his client. Their habits in respect to preparation for trial presented an extraordinary contrast. Mr. O'Connor spared no labor in the preparation; all the work was performed or supervised by him, even to the smallest detail. Nothing could exceed the thoroughness of his preparation upon the law and the facts. It seemed almost impossible that any other lawyer could prepare as thoroughly as he did. Mr. Brady's habits were the reverse; he went to the very opposite extreme. In the early part of his professional career, it was said, he was quite studious. But afterwards, especially during the last twenty years of his life (He died in 1869 when 54 years of age), as a rule he made no preparation for trial. When consultations were appointed for those on his side of the case, he failed to attend them, but on the morning of the commencement of the trial he promptly appeared in court. As soon as the trial had started he gave close attention. He was quite likely to learn, for the first time, something about the side he represented when the case was opened to the jury, by the attorney or the junior counsel associated with him. After the trial had progressed a little he would grasp, as if by intuition, the leading features and the turning points of the case; and anyone who did not know to the contrary would suppose that he had made as much preparation as Mr. O'Connor before trial. Mr. O'Connor succeeded by reason of his almost superhuman assiduity in preparing his case. Mr. Brady succeeded in spite of his indolence and lack of preparation. Mr. O'Connor was a good speaker; Mr. Brady was a born orator. In address,—as to juries and public assemblages the one was powerful; the other was magnetic. In public addresses, when Mr. O'Connor closed, the audience would, with considerable enthusiasm, applaud. When Mr. Brady wound up his speech, the entire audience would yell, 'Go on! go on!' and continue to yell so long as there was the faintest possibility that their demands might be complied with. In large political meetings, when Brady was to speak, the managers would put him down as the last speaker in order to hold the audience; for the vast crowds assembled would wait to hear Brady if they had to remain all night. He was the pet and idol of the Bar, as well as of public assemblies."—*Extraordinary Cases*, by Henry L. Clinton,—84-6.

#### A LOVER OF LITERATURE

"In the midst of the most engrossing career, Mr. Brady found time to indulge his literary tastes. He submitted to the most laborious and persevering process of private study. Among his table books, were the works of Atterbury, Steele, Swift, Burke, Fenelon, Halifax, and Berkley. He read critically Aeschylus, Sophocles and Euripides,—the three great Greek dramatic writers whom the Alexandrine critics regarded as the foundation of the Greek literature."

—From *T. B. Proctor's Sketch of Brady*,—'Bench and Bar of New York,' 266-9.



## NICHOLAS HILL ON BRADY

"Brady's arguments gave me more trouble and annoyance and caused me to study my cases more searchingly and closely than did those of any other lawyer against whom I have ever been pitted."

—*Proctor's 'Bench and Bar of N. Y.,' 263.*

## THE JUDGE REBUKED BRADY WHEN DRUNK

Brady entered the New York Appellate Court, to argue a case, which was announced, 'ready,' unrolling his papers, but so intoxicated that he could scarcely walk. The judge seeing his condition, said sharply:

"Mr Brady, you are too drunk to argue a case in this court!"

Brady still advanced towards the judge's desk, still untying his papers. The judge again expostulated with him:

"Mr. Brady, you are in too drunken a condition to try a case in this court!"

At this, Brady began to withdraw, and ceased unwinding his papers, with the remark:

"Say, Judge, that is the first correct decision you have given in a long time."

## RETORT TO NICHOLAS HILL

Said Hill, in reference to Brady's habit of intemperance:

"Betwixt Brady and brandy, there is but one letter;  
If Brady would take less brandy, it would be better."

Brady scratched his head a minute and retorted:

"Betwixt Hill and hell, there is but one letter;  
If Hill were in hell, 'twould be much better."

## THE SANDS OF LIFE

Brady tried a case against one Bliss, as counsel for the other side, and the judge limited each to one hour's talk, and timed each speaker with an hour-glass. Brady spoke first, and as the sands ran through the glass, he closed with an eloquent peroration. Mr. Bliss waxed so eloquent in reply that the judge forgot the time,—the sands ran through, and still he waxed eloquent. Finally Brady rose, but was not allowed to speak, so absorbed was the judge. He rose again, and getting the attention of the judge, reminded him that his opponent had run way over his time, and gave them this couplet:

"The sands of life have ceased to run,  
Yet endless Bliss has just begun."

## BRADY'S FIRST OFFICE,—A HAT STORE

When Jas. T. Brady opened his office in New York, he took an office which used to be an old hat renovating establishment. One day, Brady heard a supposed client clambering up the stairs, and in came a would-be customer of the old hat-cleaner, and hat-blocker. Looking around in surprise, the stranger asked: "What do you sell here, sir?" "Block-heads," replied Brady. "Well," observed the intruder,—*"I see you have one left yet."*

—*This was told the compiler of this work, by James A. Edgerley, of Somersworth, N. H., who said Brady told him this joke upon himself, and laughed heartily as he told it. Edgerley further said that phrenologists pronounced Brady's head, the most perfectly shaped, of any head they had ever known.*



## A DESECRATED HEARTSTONE

"I shall prove to you circumstances which, for a hundred years past, have been regarded as a justifiable retribution for domestic peace destroyed, for hopes blasted, homes desecrated—all that the heart has garnered up as its last, its only solace, withered by some brilliant and insidious seducer, whom the arm of the law cannot reach.

"Alas! that hearthstone was desecrated; the spoiler had been there. Where joy and brightness had reigned luxuriantly, were sorrow and gloom. That beautiful fabric of domestic love and tranquility was overwhelmed in ruin, and the ravens of despair were croaking and gloating over the dark desolation. Gentlemen, what is home without its jewels, what is earth without its flowers, what is heaven without its stars?"

—*Extract from the Sickles-Key murder trial at Washington, D. C., in allusion to Philip Barton Key despoiling the home of Daniel E. Sickles, the prisoner at the bar.*

## REPLY TO BARKING DOG

Once while in one of his oratorical flights, he became violent in his tone and gestures, and a juror's dog, which had been lying under his master's chair, suddenly appeared and barked at the orator. As quick as a flash, Brady turned on the brute with:

"I am Sir Oracle,  
And when I ope my lips let no dog bark!"

## WHEN THE ADVOCATE IS OF USE

"The advocate is of very little use in the days of prosperity and peace in the periods of repose, in protecting your property, or aiding you to recover your rights of a civil nature. It is only when public opinion, or the strong power of government, the formidable array of a multitude is directed against you, that the advocate is of any use.

"The struggles in the history of the world, to have in criminal trials an honest judiciary, a fearless jury, and a faithful advocate, disclose a great deal of wrong and suffering inflicted on advocates silenced by force, trembling at the bar where they ought to be utterly immovable in the discharge of their duty—on juries fined and imprisoned, and kept lying in dungeons for years because they dared, in state prosecutions, to find verdicts against the direction of the court. The provisions of our own Constitution, which secures to men trial by jury and all the rights incident to that sacred and invaluable privilege, are the history of wrong against which those provisions are intended to guard in the future."

—*Jas. T. Brady, in Defense of the Savannah Privateers, in Circuit Court of U. S., at N. Y. City, 1861.*

## BARON BRAMWELL (1808-1892) England

GEORGE WILLIAM WILSHIRE

### SKETCH OF

Born at Finch Lane, Cornwall, England. Was twenty years in Exchequer Division, where he made a great reputation. In all, he had 26 years experience on the English Bench.

### A COUNSEL'S DUTY TO DEFEND A BAD CAUSE

"A man's rights are to be determined by the court, not by his attorney or counsel. It is for the want of remembering this that foolish people object to lawyers that they will advocate a case against their own opinions. A client is entitled to say to his counsel, I want your advocacy, not your judgment; I prefer that of the court."

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### JURISPRUDENCE—*Burke*

"The science of jurisprudence—the pride of the human intellect, with all its defects, redundancies, and errors, is the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns."

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### OPPOSED AND FINALLY DEFEATED THE FIELD CIVIL CODE

"We have seen the press, the Bar of the State of N. Y., viewing with comparative unconcern the endeavor of a few men, it might almost be said, of one man, to abrogate our system of unwritten law, to discard the principles and methods from which it has sprung, and to substitute in its place a scheme of codification borrowed from the systems of despotic nations. \* \* \* The new aspect now given to the argument is to lay down as its foundation, the proposition that human transactions, especially private transactions, can be governed only by the principles of justice; that these have an absolute existence, and cannot be *made* by human enactment; that they are wrapped up with the transactions which they regulate, and are *discovered* by subjecting those transactions to examination; and the law is consequently a *science* depending upon the observation of facts and not a *contrivance* to be established by legislation, that being a method directly antagonistic to science."

—Said by James C. Carter in opposition to the Code, George Alfred Miller, Article 'Carter,' 8 'Gt. Am. Lawyers.' 18-22.

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### LAWYER—WHEN A MECHANIC

"A lawyer without history or literature is a mechanic—a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect."—*Sir Walter Scott in 'Guy Mannering.'*

Scott began as a lawyer; born 1771, died 1832; made \$400,000 by his writings—*Author.*

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### LAWYER'S STYLE

"A lawyer should be able to scatter the flowers of polite literature over the thorny brakes of jurisprudence."—*Henry Hallam.*



# LOUIS DEMBITZ BRANDEIS (1856- ), Washington, D. C.

## SOME ACCOUNT OF HIS CAREER

Mr. Justice Brandeis, who has been on the U. S. Supreme Court Bench since June 5, 1916, at the appointment of President Woodrow Wilson, Jan. 28, 1916, was born in Louisville, Ky., Nov. 13, 1856; was educated in the Louisville public and high schools, and at Dresden, Germany; LL.B. of Harvard, 1877; honorary A. M., 1891; admitted to bar 1878; in the practice of the law, Boston, Mass., 1897-1916; member, Warren & Brandeis, 1879-97;—Brandeis, Dunbar & Nutter, 1897-1916. Counsel for Mr. Glavis in Ballinger-Pinchot investigation, before Inter-State Commerce Commission, in the 2nd. advance freight-rate case, 1913-14; Special Counsel for the Government in Riggs Nat. Bk. case, 1915; counsel for the people, in proceedings involving constitutionality of Ore. & Ill. women's 10-hr. laws, Ohio 9-hr. law, Calif., 8-hr. law, Ore, minimum wage law 1907-14, and in preserving Boston municipal subways system, 1900-07, and the Mass. Savings Bk. Insurance, and also in opposing the New Haven monopoly of transportation in New England, 1907-13; Chairman Arbitration Board N. Y. Garment Worker's strike, 1910; Chairman Provisional Committee for Zionist affairs, 1910-16; appointed U. S. Associate Justice, Jan. 18, 1916, and assumed office June 5, 1916.

## THE LAW AND THE PEOPLE

"In the past the courts have reached their conclusions largely deductively from preconceived notions and precedents, the method I have tried to employ in arguing cases has been inductive reasoning from the facts. In general I believe the courts and the people have been too far apart. There is no subject so complex that the people cannot be interested in it, if pains enough be taken, and I believe that the common agreement of public sentiment should influence the court's decision on many a question."

—*Interview with Ernest Poole, American Magazine, March, 1911.*

## WHY THE LAWYER AND PEOPLE ARE ESTRANGED

"It is true that at the present time the lawyer does not hold that position with the people that he held fifty years ago, but the reason is not in my opinion, lack of opportunity. It is because, instead of holding a position of independence between the wealthy and the people, prepared to curb the excesses of either, the able lawyers have to a great extent allowed themselves to become an adjunct of the great corporations and have neglected their obligations to use their powers for the protection of the people."—*From an Address, in 1905.*

## EDUCATE JUDGES

"What we must do in America is not to attack our judges, but to educate them."—*Louis D. Brandeis.*



## W. C. P. BRECKENRIDGE (1837-1904), Kentucky

### THE PILGRIMS

"My countrymen: In the midst of fierce disputations, of trials and perils, there never was a moment when the heroic sacrifices, the devotion to truth, the fidelity to conviction, of those who landed not only at Plymouth, but at all points in New England, did not receive my hearty gratitude and cordial praise. We are the children of exiles and emigrants. We spring from the common root, and are of the same blood. Our fathers came for the same general purpose, and together won a common independence; and to-day, standing near where Elder Brewster and William Bradford, John Carver, and Miles Standish landed, I am as much at home as under the shadow of the monument which Massachusetts helped to build to Henry Clay. And when I project myself into the mighty and ever widening future with the ever increasing application of truth to human institutions, I never attempt to separate what the sons of New England will do from that which Virginia's and Kentucky's sons may also do.

'In the name of God, Amen!'

"On the 21st day of November, 1620, in the cabin of the *Mayflower*, as she lay at anchor in Provincetown Harbor, the compact signed by the adult males of that immortal ship's company of exiles began with this solemn phrase—the formal, technical, habitual beginning of solemn instruments; and to-day, amid such different conditions, we repeat with intense and loving emphasis the old phrase, and load each word with gratitude and praise. As we gather to dedicate this monument to the memory of those illustrious forefathers, to the honor of their principles and convictions, to the grateful applause of all freemen for their labors and sacrifices, and ourselves and the future to the preservation and amplification of true liberty, we reverently—like unto the statue of faith—uplift our faces and raise our hands to the unchanged heavens and the changeless Father, and solemnly repeat—'In the name of God, Amen!'

"It is not a mere fanciful conception that in this phrase lies the power which produces, and the seed from which sprung, the action of that company and the results thereof? It is, perhaps, true that he who drafted that instrument somewhat unconsciously and as a matter of common habit used that formal phrase with which it was then—even so now customary to open solemn instruments; and it may be further true that those who subscribed their names may not have felt any special thrill as these words were read aloud to them in the little cabin; and yet it is further true that this purpose—to do and to live 'in the name of God'—is the only possible, as it is the amply sufficient, explanation of all which preceded and all which has followed that act. It has been plausibly and eloquently urged that one of the honors to be given to these revered men is that they were 'at the beginning' of our institutions; and that they left behind them the old forms and institutions, based on new principles and protected by new and original government modes. This is a captivating picture and attracts the heart."

—*W. C. P. Breckenridge, of Ky. . Educated in Center College, Ky. and in the Law Department of the University of Louisville. Served ten years in Congress.*

The above speech was made in 1869, at the dedication of the National Monument to the Pilgrims at Plymouth, Mass.



## SIDNEY BREESE (1800-1878), Illinois

### DECISION MUST HAVE REASON BEHIND IT

"The rule as laid down seems to me to be destitute of any good reason on which to base it, and altogether too technical for this age. How a scrawl made with a pen and ink affixed to the name of the writer of the letter which is the authority to execute the appeal bond, could give it any additional validity, I cannot discover. It is conceded, if the writer's name had this magical scrawl affixed to it, it would then possess all the efficacy of a sealed instrument or deed.\*\*\*I cannot consent to yield up my judgment, in any case, because others have decided a point in a particular manner, unless I can see the reason of the decision, seeing none in this case and believing that the purposes of justice are not all subserved by an adherence to such antiquated rules and unmeaning technicalities, I dissent from the opinion. \* \* \* Several of my brother Judges coincide in the view here expressed, but think the rule is the law, with which they cannot interfere, it being for the legislative power to change it. I think differently. I am of opinion that courts are bound to see the propriety and reason of every rule, before it receives their sanction and approbation, in cases wherein there are no statutory provisions applicable; in such cases the will of the legislature, as expressed by them, is the law, however unwise or unreasonable it may be, if no constitutional provision is violated. Not so in other cases. We should know the reason why it is, and should be so; and if the alleged reason is absurd, we should not yield our acquiescence."

—*Sidney Breese, Ill.—in Maus v. Worthing, 4 Ill., 26 (1841).*

In this case Abraham Lincoln moved to dismiss an appeal bond because executed in the name of a surety by an attorney-in-fact; and the letter of attorney was not under seal. The Court sustained the motion and dismissed the appeal,—following Lincoln's contention. "This case proves that Lincoln was no less inclined," says John T. Richards in his recent book, 'Abraham Lincoln,—the Lawyer-Statesman,' at pages 62-3, "to take advantage of a technical defense than any other member of the bar whenever the interest of his client seemed to justify that course"—*Author*.

"Judge Breese was a man of great learning, in the best and broadest sense of that term. To the studies prescribed by the college of which he was a graduate (Union College, Schenectady, N. Y.) he added a lifetime of study. Notwithstanding his constant employment in public life, he found time for the study of the classics, both in Latin and English. After the close of the day, till late in the night, I have often known him, in his private room, before retiring, to spend hours upon standard works in literature and on scientific subjects. It was his constant habit. It is a marvel, the intellectual labor he could endure. His memory was remarkable, and suffered no failure in his last days."

—*Judge John W. Scott, for years his associate on the Supreme Bench.*

### CONSTRUCTIVE CONTEMPTS

"Our Constitution has provided that the printing presses shall be free to every person who may undertake to examine the proceedings of any and every department of the government, and he may publish the truth, if the matter published is proper for public information, and the free communication of thoughts and opinions is encouraged.\*\*\*An honest, independent and intelligent Court will win its way to public confidence,



in spite of newspaper paragraphs, however pointed may be their wit or satire, and its dignity will suffer less by passing them unnoticed, than by arraigning the perpetrators, trying them in a summary way, and punishing them by the judgment of the offended party.

"It does not seem to me necessary, for the protection of Courts in the exercise of their legitimate powers, that this one, so liable to abuse, should also be conceded to them. It may be so frequently exercised, as to destroy that moral influence which is their best possession, until finally the administration of Justice is brought into disrepute. Respect to Courts can not be compelled; it is the voluntary tribute of the public to worth, virtue and intelligence, and whilst they are found upon the judgment seat, so long, and no longer, will they retain the public confidence. If a Judge be libelled by the public press, he and his assailant should be placed on equal grounds, and the common arbiter should be a Jury of the Country; and if he has received an injury, ample remuneration will be made."

—*Sidney Breese, in Stuart v. The People, 3 Scammon, 395.*

The Judge referred to the power to punish for contempt as "not a jewel of the Court, to be admired and prized, but a rod rather, and most potent when rarely used." Judge Breese voiced the decision of the Supreme Court, but Judge Douglas dissented.

### EXPERT EVIDENCE

"These doctors were summoned by the contestants, as 'experts' for the purpose of invalidating a will deliberately made by a man quite as competent as either of them to do such an act; they were the contestant's witnesses, and so considered themselves, Dr. Basset especially, whose whole testimony is pregnant with such indications. The testimony of such is worth but little, and should always be received by Juries with great caution. It was said by a distinguished Judge, in a case before him, if there was any kind of testimony not only of no value, but even worse than that, it was, in his judgment, that of medical experts. They may be able to state the diagnosis of the disease more learnedly, but, upon the question whether it had at a given time, reached such a stage, that the subject of it was incapable of making a contract, or was irresponsible for his acts, the opinion of his neighbors, if men of good common sense, would be worth more than that of all the experts in the country."

—*Sidney Breese,—in Rutherford v. Morris, 77 Ill. 397.*

Only one member of the court concurred in this opinion; one dissented, one wrote a brief memo. concurring in the judgment and three filed separate opinions for reversal.—*Author.*

### HOW CITIES GET POWER TO ESTABLISH PARKS AND BOULEVARDS

"The whole legislative power of the state, is conferred by the Constitution, upon the general assembly, composed of two houses, the members of both to have certain qualifications and to be elected by the people. It follows, therefore, that every subject, not withdrawn from them by the Constitution, and which is within the scope of civil government, can be dealt with by that body and as it may act upon the state at large by general laws affecting the whole country and all the people, so it may, in its discretion, there being no prohibition expressly made, or necessarily implied, make special laws to relate only to separate districts or portions of the state. The members of the two houses are the Constitutional agents of the public will in every district or locality of the state, and they may, therefore, so arrange the powers to be given and



executed therein, as convenience, the efficiency of administration, and the public good may seem to require, by committing some functions to local jurisdictions already established, or by establishing local jurisdictions for that express purpose."

—*Sidney Breese*,—in *People v. Mayor of Chicago*, 51 Ill. 17; *People v. Solomon*, 51. Ill.

Said the late E. B. Washburne: "There is not a man in the State who knows so much of its early history as Judge Breese. No man living there has been so thoroughly identified with all its history; has been so much a part of it, and who at the Bar, in the Senate House and on the Bench has so long and so ably illustrated its annals. The Reports of the Supreme Court attest his profound knowledge of the law, the vigor of his intellect, the ripeness of his scholarship, and the peculiar grace of his diction. No Judge who ever sat on the Bench could touch the very heart and soul of a law suit with more unerring certainty; and his opinions will live as long as the jurisdiction of the State shall exist."

—4 *Great American Lawyers*, 491. He was a member of the Supreme Court of Illinois for 21 years.

#### JUDGE BREESE'S OPINION OF LINCOLN

"Mr. Lincoln was never found deficient in all the knowledge requisite to represent the strong points of his case to the best advantage, and by his searching analysis make clear the most intricate controversy. There was that within him glowing in his mind, which enabled him to impress with the force of his logic, his own clear perception upon the minds of those he sought to influence."

"For my single self, I have for a quarter of a century regarded Mr. Lincoln as the finest lawyer I ever knew."

#### RAILROAD CO. IS LIABLE IN DAMAGES FOR NEGLIGENCE OF EMPLOYEES

"The plea is set up by the defendant (C. B. & Q. R. R.) for the refusal is so absurd as to be unworthy of notice, any further than to stamp it as unworthy of civilized and Christian men. They had no right, forsooth, to enter upon the premises for such a purpose. Has it come to this, that citizens of this Commonwealth are not permitted to enter the premises of another, whose house or barn is on fire, to extinguish the flames? Is any license necessary for a purpose so benevolent? Would not savages, prompted by their own instinct rush to the rescue of property so endangered? It is sad and humiliating to contemplate the fact, that employees of a railroad company acting under a charter granted by this State, should be so lost to all the calls of benevolence and kindness—to all the common instincts of the most ordinary humanity, as to refuse to aid in extinguishing a fire, which their own employees, by their negligence, had originated, which threatened the destruction of valuable property, and which they had the power to prevent. We are shocked at the exhibition of such heartless, such criminal indifference, and can find no apology for it."

—*Judge Sidney Breese in Bass v. Chicago, Burlington and Quincy Railroad*.

In this case, the Company's employees, present at the fire and knowing its origin to be attributable to sparks escaping from a locomotive, made no effort to extinguish it.



## DAVID J. BREWER (1837-1900), Kansas

### A COURT OF EQUITY

"The powers and processes of a Court of Equity are equal to any and every emergency. They are potent to protect the humblest individual from the oppression of the mightiest corporation; to protect every corporation from the destroying greed of the public; to stop State or Nation from spoliating or destroying private rights; to grasp with strong hand every corporation, and compel it to perform its contracts of every nature, and do justice to every individual."—*Mr. Justice D. J. Brewer in the Omaha Bridge Case.*

Mr. Brewer's mother was a sister of David Dudley Field, Stephen J. Field and Cyrus W. Field. He was noted for his great learning, ability and fairness of judgment. He was appointed to the Supreme Court of the U. S., in 1889, and continued on the bench for twenty-nine years until his death.—*Author.*

### ORATORY

"Oratory is the masterful art. Poetry, painting, music, sculpture, architecture, please, thrill, inspire; but oratory rules. The orator dominates those who hear him, convinces their reason, controls their judgment, compels their action."

### INCOMPETENT EVIDENCE NOT ADMITTED, AND THE RESULT WHICH HAPPENED AFTER SIX YEARS

Judge Brewer used to relate an incident, which happened in his court, while on the United States District Bench, which was this:

A case was being tried in his court, and a question was asked by plaintiff's counsel of one of his witnesses of doubtful competency; defendant's counsel objected, and Brewer, as judge ruled that the testimony was incompetent. As plaintiff was relying upon this testimony as the pivotal point in his case, he then and there took exceptions, and went to the Supreme Court of the United States, upon that point alone. That Court, ruled that the testimony should have been allowed to go to the jury, and remanded the case for a new trial, in accordance with their finding. After six years the case came on for hearing in his court, for the second time; the same question was asked, of the same witness, and he answered he did not know. And this ended the case.

### THE LAWYER

"I can say that for over thirty years I have been a judge, and of the many thousands of lawyers who have appeared before me I have never found but a single one upon whose word I could not depend. While other professions and vocations are constantly putting on striped clothes, how seldom does any lawyer respond to a warden's call. \* \* \* Blot from American history the lawyer and all that he has done and you will rob it of more than half its glory. Remove from our society today the lawyer, with the work that he does, and you will leave that society as dry and shifting as the sands that sweep over Sahara."

—*Address to the Law Students of Maryland University, 1896.*



## BENJAMIN H. BREWSTER (1816-1888), Pennsylvania

### ART CANNOT ALONE MAKE A PEOPLE HAPPY

"Greece, Rome, Gothic and Arabic Europe, in all their sublimity and splendor of architecture and artistic decorations, are deserted by men suffering with want, and out of whom the necessities of life eat all consciousness of their influence. \* \* \* The possession of creations of art will not alone make us good and happy. The public moral sense that precedes their production and demands their creation is the only true test of their usefulness and fitness; and even then, if we degenerate and become sensuous, and voluptuary, and ostentatious, and full of folly, then their presence will only gratify a half-animal, half-intellectual passion, but it will not excite that joy which, like 'the joy of the drawing of waters,' exceeds all other joys, the joy of a serene moral nature, tranquil and content, because its aim is above self, and its object is the good of all, and its means natural and truthful."

—*Benj. H. Brewster, from an Address to the Fairmount Park Ass'n, Philadelphia, Pa., 1872.*

### BREWSTER ON HAMILTON

"Alexander Hamilton is the glory of this nation. Jurists, Statesmen and philosophers of all nations will honor and reverence his name. He will be ranked with the greatest and wisest of law-givers and philosophers. Solon and Lycurgus and Aristotle could have sat down with him and found in him a kindred spirit. \* \* \* At twenty-three he laid before James Duane, a member of Congress from New York, his plan for organizing the government of this people on a firm and stable foundation. He had at that early age fathomed the whole subject, and with a force of reason that was his great gift, he set forth in clear and well-chosen words the public wants of the confederated colonies. It was the first draft of a great Title Deed conveying supreme popular power to a government created by the people for the public good. I do not use an exaggerated expression when I say that it was an astonishing work of knowledge, wisdom and genius. It is an unexampled document. There is not another like it in the records of this world's history, and by a youth of twenty-three years! \* \* \* Washington, Franklin, Hamilton, a conjunction of human greatness, human wisdom, and human genius never before so united."

—*From an Address on Hamilton, upon the erection of Hamilton's statue, at Central Park, N. Y., Nov. 22, 1880.*

### GENIUS

"Genius—that which men call genius—the dazzling results of irregular and bewildered intellects, the sensuous thoughts of voluptuous men, can intoxicate and degrade, can enchant and enervate; but it cannot profit and exalt, it cannot give content to life, or confidence to death. Human nature is prone to ennoble those who are inspired with the dangerous gift of genius; few who are endowed with it are fit to use it. It would seem almost as if they were blemished with defects and stained with vices lest mankind should worship them."

### FAME

"If you wish to know what public fame is, remember that the long line of Roman consuls and Grecian magistrates is now forgotten, while



Aesop, the slave, Socrates, the mechanic, and Horace, the son of a freed-man, are immortal."

### PERSONAL DISFIGUREMENT

A Philadelphia lawyer, in an address to the jury, referred to Mr. Brewster's disfigurement. Mr. Brewster replied:

"When I was a baby I was a beautiful blue-eyed child. I know this, because my dear dead mother told me so; but a careless nurse let me fall into the fire, and when I was picked up from the burning coals, my face was as black as the heart of the scoundrel who has referred to my disfigurement here."

### EMORY A. STORRS ON BREWSTER

"The greatest lawyer in the country, greater than William M. Evarts."

### A LAWYER'S START AND ENDING

"The lawyer starts life giving \$500 worth of law for \$5, and ends by giving \$5 worth for \$500."—*Brewster's Life, by Savage, 38.*

### HUMAN THOUGHTS

"The highest works of human skill and human thought outlive through ages the creatures that produced them."

—*Address at a New Jersey College, 1853.*

### THE STUDY OF LETTERS

"The study of letters is the only true consolation in adversity and the only embellishment of a prosperous and happy life."—*Brewster.*

### CHURCH AND STATE

"No political organization shall receive my support that will subject citizens to a religious test. I will not consent to do anything that can be construed into acquiescence in opinions, political opinions, that would invade the right of private judgment and the liberty of conscience; and because I am a protestant I hold it to be my duty to give my testimony in favor of religious liberty and against intolerance. In my judgment it is the right of all men, as men, to think and speak as they please upon the subject of their religion, being responsible to God alone for their thoughts or words, and every attempt to deprive them of their civil rights because of those opinions would be an act of injustice and a great public crime."

—*Savidge's 'Life of Brewster,' 81.*

### POLITICS

"All the world over the trade of a politician is the occupation of a gamester; it is the business of a man whose time is spent in every strife.  
\* \* \* A life well spent in the pursuit of almost any calling will yield you a better income and give you an independence of position and a manly dignity of character that no office can secure for you. \* \* \*  
The shores of political life are strewn with wrecks and some of them were rich argosies. The highest public distinction in this country can have no attractions for right minded men unless they are the unsought reward of personal worth, dignity of character, mental ability and a blameless life—obtained in any other way they disgrace those who hold them."

—*Savidge's 'Life of Brewster,' 77.*

Said by Brewster because cheated out of U. S. Attorney-Generalship by Geo. M. Dallas' influence with President Polk.—*Author.*



## JAMES O. BROADHEAD (1819-1898), Missouri

### THE MAJESTY OF THE LAW

“There is a law that does not change; the law of the land which recognizes the doctrine that no person shall be deprived of life, liberty or property without due process of law. That is unchangeable and eternal. It qualifies the authority of legislators, it limits the jurisdiction of courts; it stands as a sentinel to guard the approach of arbitrary power over individual liberty everywhere throughout this land. Whencesoever it came, whether from the barons of Runnymede or from the forests of Germany, or from the teachings of Greek philosophers of an early age, it has found its way here and in this country has become the foundation stone of our political fabric.”

—*From argument in the U. S. Supreme Court, in United States v. The Mormon Church, 136, 140 and 150 U. S. Reports.*

### PRACTICING LAW—A SCHOOL

“The school of the practical lawyer enables him to acquire a practical acquaintance with human nature in all its multiple phases. He may learn what weakness may be pardoned; what excesses of passion may be condoned. He may learn that there are in most instances two sides to every case. How apparent violations of right may be explained. How little difference there is in the great mass of human beings, and what are the secret springs of human actions which are hidden from the outside world, and he is, therefore, less disposed to form a rash judgment of human actions. It belongs to the members of the legal profession to study the rights of individuals in their various relations to each other and to the state, and to see that they are secured by a just administration of the law. To do this demands as well a thorough knowledge of the principles of jurisprudence as taught by the masters of the profession, the special enactments of legislators, and the origin of customs which have ripened into laws by the judgment of competent tribunals, not, however, by too much reading, but by much reflection and reasoning upon what the law should be in a given case, as also the relations of the different members of society to each other, the various industries which become subjects of contracts, the products of human genius which in the progress of a rapid civilization have developed new industries, and to what extent they have changed former conditions, and in all legal controversies in which they may be concerned to make a fair and honest presentation of the law and facts before the court, and above all things to avoid the stirring up of litigation, and when consulted by a client to counsel the settlement of a controversy without litigation if it is deemed advisable to do so, under all circumstances, as an officer of the court, to have the courage to defend the right, however it may be assailed, whether by the voice of the multitude or the despotism of a single individual clothed with official power.”—*James O. Broadhead.*

Samuel T. Glover, when asked his estimate of Broadhead, replied: “A great lawyer; a great man. A very great lawyer; a very great man—when awake.” (That is he possessed great reserve power.)

Says James Hagerman, his biographer in ‘Great American Lawyers,’ Vol. 7, p. 308: “He was not unlike the Mississippi on whose banks he dwelt, which moving steadily on, sometimes at a lower and sometimes a higher stage, anon bursting its bounds and fertilizing all it touches, then returning to its channel, continues its majestic march to the sea.”



## SIR HENRY BROUGHAM (1778-1868), England

### HABIT

"I trust everything under God to habit, upon which, in all ages, the law-giver, as well as the schoolmaster, has mainly placed his reliance; habits which make everything easy, and cast all difficulties upon the deviation from a wonted course. Make sobriety a habit, and intemperance will be hateful; make prudence a habit, and profligacy will be as contrary to the child or adult, as the most atrocious crime to any of us."

—*Sir Henry Brougham.*

### SCHOLARSHIP

"Let the soldier be abroad if he will; he can do nothing in this age. There is another personage abroad, a person less imposing, in the eyes of some perhaps, insignificant. The schoolmaster is abroad; and I trust to him, armed with his primer, against the soldier in full military array."—*Sir Henry Brougham.*

"Strange fellow! His powers gone. His spirit immortal. A dead nettle."—*said Thos. B. Macaulay.*

The above passage is from a speech in the House of Commons, Jan. 29, 1828.

### DEFINITION OF A LAWYER

"A lawyer is a learned gentleman who rescues your estate from your enemies and keeps it himself."—*Sir Henry Brougham.*

### LORD BROUGHAM'S LEARNING

"There go Solon, Lycurgus, Demosthenes, Archimedes, Sir Isaac Newton, Lord Chesterfield and a great many others, in one post-chaise."

—*Samuel Rogers, as he saw Brougham's carriage drive by.*

### O'CONNELL ON BROUGHAM

"If Brougham knew a little law, he would know a little of everything."

### OUTBURSTS IN DEFENSE OF QUEEN CAROLINE

When the miserable King George IV was on the throne, he tried to get through Parliament a bill of divorce against his wife, Queen Caroline; had in fact been married to another woman, Mrs. Fitzherbert, before he ascended the throne, and as she was a Roman Catholic he had, by the law of England forfeited his title to the Kingship. The fact of his prior marriage was a secret, known to but few, had been faithfully kept, and the rascally husband had been allowed to ascend the throne and marry Caroline, in the belief that a marriage, which under oath he denied, would never be proved against him. He was thus a bigamist and a perjurer. During the trial in Parliament, Queen Caroline's counsel, Brougham and Denman, were given the proofs of the first marriage, and thus fortified, caused it to be intimated to the King's counsel, that if the trial were proceeded with, they would prove the bigamy and dispute his title. For a while it was supposed that they would not have the courage to carry out their threat. Brougham dissipated that hope by an immortal



utterance, during one of his speeches in his client's defense. After the use of language which to those who knew the secret, showed that he was referring to it, he stated that he would conceive himself bound not to make public, if the bill was not pressed, otherwise he would. Then came the statement of a counsel's duty, in words that will remain imperishable, words that nerved many a counsel to his duty in the face of adverse opinion.

"And let it not be thought, my lords, that if either now I did conceive, or if hereafter I should so far be disappointed in my expectation that the case against me will fail, as to feel it necessary to exercise that right—let no man vainly suppose, that not only I, but that any, the youngest member of the profession would hesitate one moment in the fearless discharge of his paramount duty. I once took leave to remind your lordships, which was unnecessary, but there are many whom it may be needful to remind, that an advocate, by the sacred duty which he owes his client, knows in the discharge of that office, but one person in the world, *that client and none other*. To save that client all expedient means, to protect that client at all hazards and costs to all others, and among others to himself, is the highest and most unquestioned of his duties; and he must not regard the alarm, the suffering, the torment, the destruction, which he may bring upon another. Nay, separating even the duties of a patriot from those of an advocate, and casting them, if need be, to the wind, he must go on reckless of the consequences, if his fate should unhappily be, to involve his country in confusion for his client's protection."—*In defense of Queen Caroline, in 1820.*

Says John Brooks Leavitt, in his Yale Lectures 1910: "This (the above) deliverance has sometimes been claimed to mean that in the service of his client, a lawyer should not hesitate to commit any wrong. If that were so, then the utterance would be infamous. Nothing of the sort was in Brougham's mind, as anyone will discover on reading his own account of the circumstances under which it was made. The suggestion is an insult to his memory. An honorable man will not take dishonorable means to win a client's case, whether criminal or civil."

Henry Brougham; English Lord Chancellor. Born in Edinburgh, Scotland; admitted to Scottish bar, 1800; co-operated in founding the Edinburgh Review, 1802, and contributed 80 articles to first 20 numbers; entered Lincoln's Inn, 1803; Parliament, 1810; Lord Chancellor, 1830-34. He was versatile, egotistical, turbulent, vain and rash.—*Author.*

## DEFENSE OF AMBROSE WILLIAMS FOR LIBEL

Brougham's defense of Williams, in 1821, for a libel against 'The Clergy, residing in and near the City of Durham,' nearly equals his oratorical effort in defense of Queen Caroline. When the Queen died in 1821, the bells in nearly all the churches of England were tolled out of respect to her memory; those of Durham only remaining silent. Upon this silence, Mr. Williams, who was editor of a newspaper in Durham, commented with some severity, and was, therefore, indicted for libel. Scarlett prosecuted, and Brougham defended. In opening, Scarlett had expressed regret that the clergy had not the power of defending themselves through the public press. To this Brougham replied that they had, in fact, largely used it, and "Scurrously and foully libelled" the defendant.

"Not that they wound deeply or injure much; but that is no fault of theirs: without hurting, they give trouble and discomfort. The insect brought into life by corruption, and nestled in filth, though its flight be lowly and its sting puny, can swarm and buzz and irritate the skin and offend the nostril, and altogether give us nearly as much annoyance as the wasp, whose nobler nature it aspires to emulate. These reverend slanderers,



these pious backbiters, devoid of force to wield the sword, snatch the dagger; and destitute of wit to point or barb it, and make it rankle in the wound, steep it in venom to make it fester in the scratch."

Sidney Smith, seeing Brougham drive by in his carriage, with the letter 'B' on the panel, remarked: "There goes a carriage with a 'B' (bee) outside, and a wasp inside."

### BROUGHAM'S CHARACTERIZATION OF ROMILLY

"The observer who gazes upon the character of this great man is naturally struck first of all with its most prominent feature, and that is the rare excellence which we have now marked, so far above every gift of the understanding, and which throws the lustre of mere genius into the shade. An extraordinary reach of thought; great powers of attention and of close reasoning; a memory quick and retentive; a fancy eminently brilliant, but kept in perfect discipline by his judgment and his taste, which was nice, cultivated, and severe, without any of the squeamishness so fatal to vigor, these were the qualities which, under the guidance of the most persevering industry, and with the stimulus of a lofty ambition, rendered him unquestionably the first advocate, and the most profound lawyer, of the age he flourished in; placed him among the ornaments of the Senate; and would, in all likelihood, have given him the foremost place among them all, had not the occupations of a laborious profession necessarily engrossed a disproportionate share of his attention, and made political pursuits fill a subordinate place in the scheme of his life."

—*Said of Romilly, by Lord Brougham, in his "Historical Sketches of Statesmen."* Vol. 1, p. 250.

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### THOMAS DENMAN SAVED DANIEL O'CONNELL

Thomas Denman, as one of the Law Lords, voted in favor of Daniel O'Connell's appeal from the Irish Court in 1844. Which consisted of Chief Justice Pennefather and three puisne judges—Burton, Crampton and Perrin, and by a jury of twelve, found him guilty of a conspiracy to raise sedition, etc., and for which he was sentenced by Mr. Justice Burton to imprisonment for twelve months, a fine of 2,000 pounds, and security in 5,000 pounds, his own and another's, for his good behavior during seven years—was effective before the House of Lords, five Law Lords deciding the case—Lyndhurst the Chancellor, Brougham, and Cottinham, ex-Chancellors, Campbell, ex-Chancellor for Ireland, and Denman, Lord Chief Justice. The first four were equally divided. Denman, indignant at the incompleteness of the jury panel below, turned the scale in favor of quashing the whole proceedings. If the omission of sixty names was immaterial, he said, why should not the sheriff have been at liberty to add sixty names? The persons who had tried O'Connell were not truly jurors at all. If sheriffs were to do their duty thus, then trial by jury was a mockery, a delusion, and a snare.

\* \* \* Denman held, in review in the House of Lords, that the jury which tried O'Connell was not such a jury as he was legally entitled to, and so the whole proceeding fell to the ground; and that some counts of the indictment were bad in law. but the Court in Dublin awarded the punishment on those, as well as the rest, from the impossibility of dividing or apportioning it, or of discovering how much of it belonged to one set of counts, how much to the other; and so it follows that the whole must fall.

—*Hamilton's "Life of O'Connell,"* 176; and 6 *Campbell's "Life of the Chief Justices,"* 150.



## DAVID PAUL BROWN (1795-1872), Pennsylvania

### THE STORM AND ZEPHYR—CONTRASTED

"It is easy to scorn the tempest while sporting with the zephyr; to expatiate upon the harmlessness of ice, while indulging in it, perhaps as a luxury; or to underrate famine in the abundance of your supplies; but may that power that 'rides on the whirlwind and directs the storm' protect you against the sad reality of those afflictions which in their mere theory are often so readily overcome by your self-secure, cold-blooded and reckless philosophy. Philosophy readily triumphs over past and future and remote ills; but present ills grapple closely with the heart, and triumph over philosophy."

David Paul Brown's income as a lawyer, from early manhood to his 77th year, exceeded \$250,000,—the first fifteen years they were \$100,000. Says John W. Forney: "As a criminal lawyer he had few equals." He wrote in 1856, 'The Forum, or Forty Years Full Practice at the Philadelphia Bar,' in 2 volumes. The above extract is from his argument, in defense of Alexander W. Holmes for manslaughter, in throwing overboard 16 passengers to save a sinking ship, Holmes being one of the crew, tried in U. S. Circuit, at Phila., United States v. Holmes, 1 Wall., Jr., 1 (1842). Defendant was convicted and sentenced to six months' imprisonment at hard labor, and to pay a fine of \$20.

### SURMOUNTING DIFFICULTIES MAKE MEN GREAT

"But we are told by these learned Thebans—and that too with a sneer—that we pursue a system laid down by one Sam Thomson, who sprung from an obscure corner of the State of Massachusetts, and whose father was a farmer. Why, gentlemen, who was it that shed the brightest lustre upon the vast science of astronomy? One Dave Rittenhouse, a native of Pennsylvania, who followed the plough. Who was it that tore the lightning from heaven, and the sceptre from tyrants? One Ben Franklin, a printer's boy, who protected himself against the inclemency of the winter by exercise alone, and lived upon a single roll of bread a day. Who was it, when the veteran armies of Great Britain faltered and fled in the Indian war, safely conducted the retreat, and secured the remnant of the army, though he had 'never set a squadron in the field, nor the division of a battle knew, more than a spinster?' One George Washington, a Virginia planter. Who was it that shed the brightest halo around the brightest reign that the world ever knew, the reign of Elizabeth, the age of the Raleighs, the Burleighs, the Bacons and the Sydneys? Why it was one Ben Jonson, a quondam apprentice to a bricklayer; and one William Shakespeare, a peasant boy, and shrewdly suspected of poaching upon his neighbor's deer. Or passing from astronomy, philosophy and poetry, to law; who was it that rose from low beginnings to be Lord Chief Justice of England? One Charley Abbot, whose father was a barber. Who was it that rose to be Lord High Chancellor of England? One Jack Copley, whose father was an American painter. Who was it that became the brightest star in the judicial constellation of Great Britain? One Phil Yorke, whose father no man knew. Or passing to a still further illustration. Who was it that subjugated three-fourths of Europe, and confident against the world in arms, made the autocrat of all the Russias tremble upon his throne? One Napoleon, who rose from the station of a corporal to such consummate power, to such dazzling heights, as to enable him to look down upon emperors, kings, princes, and the potentates of the earth, while he unmade them. Let us hear, therefore, no more of *Sam Thomson*, for altho I do not mean to say that there



never was a great man among the 'wealthy, curled darlings of the nation,' yet I do mean to say, and all history sustains the assertion, that luxury and affluence are calculated to enfeeble the mind, and that those, therefore, who are great in despite of them, would probably be much greater if removed from their influence. It is a well known fact among gentlemen of the turf, that blooded horses, which for years have been permitted to browse and career on broken and irregular mountain pastures, have acquired a much greater muscular strength, and in sportsman's phrase, better bottom, than those fed upon a level surface; the application of this, altho a physical illustration, is not difficult. Men whose lives have been an interrupted course of difficulty, a perfect up-hill work, acquire in time a self-dependence, a self-sufficiency, and a promptitude in every emergency, which those that have been accustomed to stand for fame on their forefather's feet, or to lean for pleasure upon another's breast, never have known and never can know."

—*From argument to the Jury, in Dr. Frost's case, for manslaughter; a contest between two rival systems of medicine; tried in 1837. Verdict, 'Guilty,' but prisoner was allowed to go free, on motion in arrest of judgment.*

## THE DIFFERENCE BETWEEN THE WRITTEN AND THE SPOKEN WORD

"We are well aware, that a speech in type is a very different matter from a speech delivered. If Patrick Henry's fame depended upon the report of his speeches, instead of the effects which they produced, we should be at a loss to conceive how he could have acquired such deathless renown. This difference is attributable to various causes, combining to produce dramatic effect. The court, the jury, the issue, the surrounding populace, the interest of the contending parties and their respective friends, the presence of the bar, the natural excitement of the occasion, all tend to impart animation and vigor to a speech, and to confirm the sentiment of Cicero, that 'no man is an orator without a multitude.' Action, which is said to be the essence of oratory, is utterly wanting. The impassioned declamations, the varied tones of the voice, the fixed and penetrating eye, the spirit that displays itself 'from every joint and motive of the body,' are neither to be appreciated nor imagined. To be understood, to be felt, they must be seen and heard. Still, as we cannot revive the dead, their past works must *speak* for them."—*The Forum, Vol. 1, pp. 459-60.*

## SHAKESPEARE

Will not a man who has a delusion gambol from his subjects; misconceive or misrepresent what he has done or said, just before? Yes, that is considered the great test. Sirs, no physician ever supplied that test. Shakespeare supplied that test;—a man whose mind embraced all things—whose genius pervaded everything,—who was a better chemist—a better metaphysician—a better lawyer—a better doctor—a better gardener—a better everything than almost any man,—nay not almost, that is short justice,—*than* any other man. What does he say? He gives two tests. I will not go to Horace, for he is not fit to hold a candle to Shakespeare. He gives you two tests. The first is, quickness of pulse. Hamlet's mother plays the same prank that is played here, and sends her son—not to the asylum, but to England—for his insanity. See how he answers when accused by his mother, of ecstasy—which signifies insanity—

"Ecstasy!

My pulse, as yours, doth temperately keep time,



And makes a healthful music, it is not madness,  
That I have uttered: bring me to the test,  
And I the matter will reward; which madness  
Would gambol from."

Two of the best tests known to metaphysicians — one a strictly medical test—the great excitement of the pulse—the other *re-wording* of the matter. And sir, there is a remarkable case—which I know your honor will take pleasure in referring to, or in allowing me to refer—related by Sir Henry Halford, physician to George III, and the head of the medical faculty, at one time, throughout the world. He tells you that he would have been able to detect insanity, if he had not applied the test that Shakespeare gives. He begins it, by the by, with this very quotation from Shakespeare."

### SHAKESPEARE'S KING LEAR

"The most clear, simple, and beautiful illustration of the doctrine for which we contend—and it is marvellous that it was overlooked by the learned gentleman—is derived from the loftiest human intellect the world ever knew, and presented in the insanity of King Lear; to which, at the risk of being considered too poetical, and too enthusiastic in my admiration of the author, I shall take leave to refer. There are two books which I shall never be afraid or ashamed to quote, and which are worth more than all the authorities—whether *bound* in calf or *lined* with calf—that have ever been arrayed in support of the prosecution. The first is the Bible—the foundation of our eternal hopes: the second is Shakespeare—the great expounder of all the springs and motives of human action.

"The earliest indication of the approaching mental infirmity of the aged king is in the interview with his daughters, in which he discards Cordelia from his heart, from her supposed want of filial affection; and then divides his kingdom between Goneril and Ragan, as a reward for their professions of devoted love. When, subsequently, these ungrateful daughters lop off their father's retainers,—abridge his comforts,—deny his authority,—and punish his friends, then it is that the whole current of his feelings, or his passions, is turned back upon itself; and his insanity is displayed more fully than as originally exhibited. He becomes, then, a monomaniac, under the direct influence of the rebellion of his children; the unexpected discovery of which is the immediate and exciting cause. We have neither time, nor disposition, minutely to trace the progress of his mental alienation; but in support of the theory assumed in this part of our argument, and in refutation of the fallacies of the commonwealth, let us refer to the language while indulging in his maniacal ravings, and when exposed to the pitiless storm.

" 'Spit fire! spout rain!  
Nor rain, wind, thunder, fire, are *my daughters*;  
I tax not you, you elements, with unkindness,  
*I never gave you kindgom, call'd you children*;  
*You owe me no subscription*; why then let fall  
Your horrible pleasure;—here I stand your slave,  
A poor, infirm, weak, and despised old man:—  
*But yet I call you servile ministers,*  
*That have with two pernicious daughters joined*  
Your high engender'd battles, 'gainst a head  
So old and white as this. O! O! 'tis foul!"

"What say our learned friends now? Do they maintain that there can be no illusion growing out of facts? Do they say that there can be no reason in madness? 'No matter and impertinency mixed?' If they do



they have my answer as thus derived from the knowledge of one whose authority has never been disputed."

—*From speech in Smith's case. Brown was for the prisoner, Smith, charged with murder, tried in Philadelphia, Jan., 1858. The trial lasted two weeks, the defendant was acquitted.*

### CHARACTER, REPUTATION, FAME

"Character is always a *good*, and sometimes an *only* defense, in doubtful cases; and surely it is conceding enough to our opponents, to admit that this is a doubtful case. Character is a broad and secure shield, against which the pointless shafts of suspicion break themselves in vain. If the advantages of a spotless reputation be at all proportioned to the difficulties encountered in its acquisition, it may be confidently relied on. The attainment of character is an up-hill work; the ascent is difficult, laborious, and treacherous; but when we reach the glorious summit, after all our toils and perils past, Fame, with her own hand, arms us at all points in celestial panoply, which, like the polished mirror, *reflects* without *retaining*, the calumny, reproaches, and odium that assail it. Reputation, it is true, may be gradually lost; its safeguards gradually impaired; but whatever may be the particular and hackneyed exceptions which human nature supplies, I hold it to be a well established rule, that it is never suddenly surrendered or abandoned, without some inducement or temptation, either actual or imaginary, commensurate with the importance of the sacrifice."

—*From speech in the Chapman case, tried in Doylestown, Pa., 1832; Mrs Lucretia Chapman was tried for poisoning her husband, for murder, defended by Brown. She was acquitted.*

### RIGHTS OF A DROWNING MAN AT SEA

"Suppose two men, occupying perfectly friendly relations to each other, should be cast away, and both seize the same plank (to me the favorite illustration), and one should thrust the other off; would it not be monstrous, upon the trial of the alleged offender, that the plank should be brought into court and submitted to some men of approved skill, and measured and examined by square, rule and compass—its specific gravity ascertained, and the possibility of its sufficiency to sustain two men discussed and decided—and upon the basis of such calculation as that the prisoner should be deprived of his liberty or his life; when, if you had placed the witnesses in his precise situation, and they had been called upon to act upon a sudden emergency, they would have done precisely what he did and what every principle of natural law abundantly warrants. It is worse than idle to suppose that in such a critical juncture as this men are to cast lots or toss up for their lives. In such peril a man makes his own law with his own right arm.

"But say the learned counsel, had the passengers been permitted to remain until morning they might have been saved by the Crescent. I answer, had they remained a single hour they would have never seen the morning—every man, woman and child would have weltered in the coral caves of the ocean. The approach of the Crescent could not, even in point of fact, have operated to alleviate their tears—without prescience, they could have anticipated no such relief. Men are to act upon the past and the present—the future belongs to God alone."

—*The Holmes Case. David Paul Brown defended William Holmes for the murder of Francis Askin at sea. Tried in 1842 in Circuit Court of U. S. Verdict, guilty. Defendant was sentenced to six month's imprisonment and fine, the latter was remitted.*



## WILLIAM JENNINGS BRYAN (1860- ), Nebraska

"Mr. Chairman and Gentlemen of the Committee: I can never fully discharge the debt of gratitude which I owe to my countrymen for the honors which they have so generously bestowed upon me; but, sirs, whether it be my lot to occupy the high office for which the convention has named me, or to spend the remainder of my days in private life, it shall be my constant ambition and my controlling purpose to aid in realizing the high ideals of those whose wisdom and courage and sacrifice brought this republic into existence.

"I can conceive of a national destiny surpassing the glories of the present and the past—a destiny which meets the responsibilities of to-day and measure up to the possibilities of the future. Behold a republic resting securely upon the foundation stones quarried by revolutionary patriots from the mountain of eternal truth—a republic applying in practice and proclaiming to the world the self-evident proposition that all men are created equal; that they are endowed with inalienable rights; that governments are instituted among men to secure these rights; that governments derive their just powers from the consent of the governed.

"Behold a republic in which civil and religious liberty stimulate all to earnest endeavor and in which the law restrains every hand uplifted for a neighbor's injury—a republic in which every citizen is a sovereign, but in which no one cares to wear a crown. Behold a republic standing erect, while empires all around are bowed beneath the weight of their own armaments—a republic whose flag is loved while other flags are only feared. Behold a republic increasing in population, in wealth, in strength and in influence, solving the problems of civilization and hastening the coming of a universal brotherhood—a republic which shakes thrones and dissolves aristocracies by its silent example, and gives light and inspiration to those who sit in darkness.

"Behold a republic gradually, but surely, becoming the supreme moral factor in the world's progress and the accepted arbiter of the world's disputes—a republic whose history, like the path of the just, 'is as the shining light, that shineth more and more unto the perfect day'."

—*William J. Bryan, Peroration in acceptance of the Democratic nomination for the Presidency, 1900.*

Born in Salem, Ill., graduated from Illinois College with highest honors; studied law in Chicago and was admitted to the bar; removed to Lincoln, Neb., three years later, elected to Congress, and re-elected the following term; founded *The Commoner*, a weekly journal. He has been the candidate of the Democratic party in three presidential elections, but was each time defeated. Secretary of State, under Woodrow Wilson, but resigned.

—*Author.*

### "THE CROSS OF GOLD"

"You shall not press down upon the brow of labor this crown of thorns; you shall not crucify mankind upon a cross of gold."

—*The closing of his platform speech for a free silver plank. He was not yet 36 years old. This won him the nomination.*



## JAMES BRYCE (1838-1922), England

### SUPERIORITY OF TALKING OVER READING

"Talking has this advantage over reading, that in it the mind is less passive. It is thinking that matters, not reading, and by Thinking I mean the power of getting at Facts and arguing consecutively from them. In conversation there is a clash of wits and to that some mental exertion must go. The Athenian voters, chatting as they walked away in groups from the Assembly, talked over the speeches. They had been made to feel that there were two sides to every question, and they argued these with one another. Socrates, or some eager youth who had listened to Protagoras or Georgias, overtook them on the way, and started fresh points for discussion. This was political education. But in these days of ours reading has become a substitute for thinking. The man who reads only the newspaper of his own party, and reads its political intelligence in a medley of other stuff, narratives of crimes and descriptions of football matches, need not know that there is more than one side to a question, and seldom asks if there is one, nor what is the evidence for what the paper tells him. The printed page, because it seems to represent some unknown power, is believed more readily than what he hears in talk. He takes from it statements, perhaps groundless, perhaps invented, which he will not take from one of his fellows in the workshop or counting-house. Moreover the Tree of Knowledge is the Tree of Knowledge of Evil as well as of Good. On the printed page Truth has no better chance than Falsehood, except with those who read widely and have the capacity of discernment. A party organ suppressing some facts, misrepresenting others, is the worst of all guides, because it can by incessantly reiterating untruth produce a greater impression than any man or body or men, save only ecclesiastics clothed with a spiritual authority, could produce before printing was invented. A modern voter so guided by his party newspapers is no better off than his grandfather who eighty years ago voted at the bidding of his landlord or his employer or (in Ireland) of his priest. The grandfather at least knew whom he was following, while the grandson, who reads only what is printed on one side of a controversy, may be the victim of selfish interests who owns the organs which his simplicity assumes to express public opinion or to have the public good at heart. So a democracy that has been taught only to read and not also to reflect and judge will not be the better for the ability to read. That impulse to hasty and ill-considered action which was the besetting danger of ruling assemblies swayed by orators, will reappear in the impression simultaneously produced through the press on masses of men all over a large country.

"\*\*\*\*Take English history during the 19th century, and mark in how many cases the working men gave their sympathy to causes which 'society' frowned upon, and which subsequent events proved to have deserved that sympathy. What outworn prejudices, what foolish prophecies, what wild counsels may be heard from the lips of the rich! What ridiculous calumnies against political opponents have been greedily swallowed in the fashionable circles of Paris and London! What narrow views have been expressed even by brilliant writers and accomplished teachers or divines! High attainments in some branch of science or learning are compatible with crass ignorance and obstinate perversity where practical issues are involved. Heraclitus said long ago, 'Much knowledge does not teach wisdom.' Have not associations of working-men been more often right in their political judgment of measures than



college common rooms and military clubs? The instincts of the multitude are as likely to be right as the theories of the learned."

—*James Bryce's 'Modern Democracies', (Feb., 1921) pp. 72-4, Vol. I.*

## THE BIBLE

"Every one can find in the Christian Scriptures what he seeks, because those books are not, like the Koran, the product of any one mind or time but of eight centuries, and record not only events and the words of men, but also the emergence and growth of ideas and beliefs slowly developed in the long life of a people which has contributed more than any other to the religious thought of mankind. The habit of trying to apply to current politics isolated dicta meant for other conditions has now passed away. No party resorts to an arsenal which provides weapons equally available for all."—*Idem 88.*

## CURRAN, PLUNKET, GRATTAN, BURKE

"There have been no orators more illustrious, few indeed so illustrious, in the long line of English oratory and statesmanship, as four Irishmen who flourished at the end of the 18th century, Curran, Plunket, Grattan, and, above all, Edmund Burke, perhaps the only person in modern times who was not only a great statesman and orator but also one of the greatest prose writers of his day. Any country that produced four men like Curran, Plunket, Grattan, and Burke, and produced them all in the same generation, has rendered a service to England and to the glory of the English tongue which Englishmen and Americans ought never to forget."—*Jas. Bryce,—"Scoto-Irish Race in Ulster and America", 1909.*

## LORD CAIRNS

"Lord Cairns was one of the most finished masters of legal science in England, the 19th century saw, a most powerful parliamentary speaker, a great advocate, and still greater as a judge."—*Jas. Bryce.*

## BUCKLE'S 'HISTORY OF CIVILIZATION IN ENGLAND'

"Some fifty years ago the late H. T. Buckle published a book entitled 'A History of Civilization.' Its vigorous style and bold generalizations gave it popularity at the time. But though Buckle had read widely and done a good deal of thinking, his knowledge was altogether insufficient to qualify him for the task he was attempting, and he had not been trained to apply adequate criticism to the authorities he used. There were in the book some true things forcibly stated and fitted to stimulate reflection, but it made no really important contribution to knowledge; and some of his generalizations, as for instance the well-known parallel between Scotland and Spain, were ludicrous."

—*Jas. Bryce,—"The Writings and Teachings of History." An Address, at Syracuse, N. Y., Union College, June, 1911.*

## THE STUDY OF HISTORY

"We can conjecture the future only from what we know of the past, that is to say, from what we know of human nature and the processes by which it and human institutions change. One who knows only his own country and people does not really know them, because it is only by knowing something of other countries and their peoples that he can tell which characteristics of his own people are normal, generally present



in all peoples, and which are peculiar to his own. So, likewise, he who knows only his own time does not really know it, for he cannot distinguish between characteristics that are transient and those that are permanent. This is the main use of history, besides of course the pleasure which all knowledge gives. To know what we are, we must know how we came to be what we are, and must realize that we shall before long pass into something different."

—*Jas. Bryce*,—*'The Study of Ancient Literature,' at University of Michigan, Apr., 1911.*

### JAMES FROUDE

"Froude was a brilliant stylist, who had begun his career as a writer of stories, and chose thereafter to display in the field of history his gifts of picturesque narration. His ecclesiastical partisanship was usually evident enough to enable a reader to discount it. A graver fault was that superb indifference to truth which sometimes led him to regard the facts he had to deal with chiefly as so much material to be handled with a view to artistic effect, putting on them such coloring as was needed to secure the particular effect desired, and caring little for accuracy in details which did not move his curiosity."

—*Jas. Bryce*,—*'The Writings and Teachings of History,' Syracuse, N. Y., Union College, June, 1911.*

### T. B. MACAULAY

"Macaulay's amazing force and brilliance have drawn, and continue to draw thousands of people to his pages who would have been attracted by no one with a less fascinating style. But though his eminence and pronounced political views exposed him, in his life-time, to a captiously minute and rather niggling criticism, his work has, take it all in all, stood the test of time as an authority."—*James Bryce*,—*Idem.*

### JOHN RICHARD GREEN

"Green, though sometimes heedless in small things, was in essential matters a sound and trustworthy writer, against whom few serious errors have ever been proved, yet his short history of England is confessedly as fascinating as any novel."—*Jas. Bryce*,—*Idem.*

### LORD ACTON

"Lord Acton, one of the most accurate as well as the most learned of recent English historians, though sometimes obscure from the very pregnancy of his thought, lit up his narrative with epigrammatic wisdom, and, more rarely, with descriptions of concentrated glow."

—*Jas. Bryce*,—*Idem.*

### BANCROFT AND MOTLEY

"Bancroft and Motley marred the effect of their books by needless rhetoric."—*Jas. Bryce*,—*Idem.*

### PARKMAN

"Francis Parkman's laborious researches did not wither the freshness of his mind."—*Jas. Bryce*,—*Idem.*



## RESOURCES WITHIN ONE'S SELF

"He who under disappointments or sorrows has no resources within his own command beyond the daily round of business duties,—nothing to which he can turn to cheer or refresh his mind, wants a precious spring of strength and consolation."

—*Jas. Bryce*,—at *Chicago University*, June 11, 1907.

## SIR CHARLES RUSSELL

"Sir Charles Russell was, when at the bar, one of the most powerful advocates of our time, a strong, if not a very learned judge. He was an Irish Roman Catholic."—*Jas. Bryce*. To *Society of Penna.*, Feb., 1909.

## GOETHE ON SHAKESPEARE

"Goethe's criticisms on Shakespeare's plays are the best that have ever been made."—*Jas. Bryce*.—At *University of Michigan*, April, 1911.

## FICTION, HISTORY, POETRY

"Prose fiction, in its highest forms, cultivates the imagination almost as well as history does, but poetry does this better than either. The pleasures of the imagination are among the highest we can enjoy."

—*Jas. Bryce*.—'*Some Hints on Reading*,' *Rutgers College*, N. J., Oct., 1911.

## WASHINGTON, FRANKLIN, HAMILTON

"In that group (those that framed the constitution) were three men,—Washington, Franklin and Hamilton, whose fame belongs to the history of the world."

—*Bryce*,—'*Hints on Reading*,' at *Rutgers College*, N. J., Oct., 1911

## JAMES WILSON

"Among the others, eminent men, even if they did not attain unto those first three,—Washington, Franklin and Hamilton,—one of the most eminent came also as a delegate from the State of Pennsylvania; a Scotsman from Fife who had few equals and possibly no superior in that Convention, as respects either the acuteness of his mind, or his penetration and sagacity; a man to whom some of the best features of the Constitution were due, and who, by his speeches in your Pennsylvania convention, held to consider the draft prepared by the Convention, added an illuminating commentary upon many provisions of the Constitution, and no doubt contributed materially to its adoption, both in your State and in the other States of the Union."

—*Bryce*,—'*The Constitution of the U. S.*' To *Society of N. Y. City*, Dec. 14, 1921.

## MACAULAY—A SWIFT READER

"Macaulay read so swiftly that he seemed to turn the pages almost without pausing, taking in at a glance all that was in them, and yet carrying away all that was worth remembering."—'*On Reading*.'

## LORD ACTON—PAINSTAKING

"Lord Acton, the most learned man I ever knew, was in the habit of copying on slips of paper passages or sentences which he thought valuable



from all the volumes he perused. He had hundreds of cardboard boxes filled with these slips, the boxes being labeled with the titles of their subjects; and he seemed to know how to lay his hand upon any extract he wanted."—*Bryce*.—*'Hints on Reading.'*

### OUR SUPERSTITIONS

"That there is nothing of which men are so tenacious as their superstitions, may, perhaps, be ascribed to the fact that life is ruled more by emotion and habit than by reason."—*Bryce's South America*, p. 158.

### INTERMIXTURE OF RACES—Not Degenerating to the Whites

"What ultimate effect the intermixture of blood will have on the European element in Brazil, I will not venture to predict. If one may judge from a few remarkable cases, it will not necessarily reduce the intellectual standard. One of the ablest and most refined Brazilians I have known had some color; and other cases have been mentioned to me. Assumptions and preconceptions must be eschewed, however plausible they may seem."—*Bryce's 'South America.'* p. 480.

### AFRICA—THE PYRENEES

"Alexander Dumas says,—*'Africa begins at the Pyrenees'*; but I say, —South America begins at the Rio Grande del Norte, for Mexico is South American."—*Bryce's 'South America,'* 521.

### SHAKESPEARE

"There is a sense in which Shakespeare is a greater glory to England than the Empire of India. Homer, Virgil, Plato and Tacitus are a gift made by the ancient world to all the ages; more precious, because more enduring than any achievements of war, government or commerce."  
—*Bryce's 'South America,'* 521.

### SOUTH AMERICAN CITIES

"Buenos Aires (1,300,000), Rio De Janeiro, (1,000,000), San Paulo, Brazil (400,000), and Santiago (325,000) are the four largest cities. (This was in 1810) Buenos Aires ('pure air'), is something between Paris and New York. It has the business rush and the luxury of the one, the gaiety and pleasure-loving aspect of the other.\*\*\*Nowhere in the world does one get a stronger impression of exuberant wealth and extravagance. There are very few North Americans there. San Paulo is sixty miles inland from Santos, and in the center of the coffee industry. There was exported in 1910, through the port of Santos, more than one-half that went out of all Brazil.—\$93,107,000 worth."

—*Bryce's 'South America,'* 312, 218 and 150.

### SPANISH—A WORLD SPEECH

"Spanish is called by the Germans a 'world speech.' It is now used by 60,000,000 people in the New World, as well as by 20,000,000 people in Old Spain."—*Bryce's 'South America,'* 576.

### SOUTH AMERICAN COUNTRIES

"Columbia has 435,000 square miles,—twice as large as France, and ten people to the square mile; Peru has an area of 700,000 square miles,

—three times the size of France,— $3\frac{1}{2}$  people to the square mile; Bolivia 605,000 square miles; LaPaz, 50,000 population, is the highest city in Bolivia; and in the world,—12,470 feet above sea-level (2,000 ft. above Quito, and 5,000 ft. above Mexico City; Lahasa, Tibet, comes next to it—11,830 ft. high); one-third of the world's tin comes from Bolivia.

“Chili is 3,000 miles long. The entire population of South America is about 45,000,000,—nearly one-half that of the United States, probably one-fifth pure Indian, nearly one-third half-breeds, and about one-fifth negroes,—nearly all in Brazil.

“Nowhere in the world is there such variety of trees,—more than 40 kinds are found in Brazil.”

—*Bryce's 'South America,'—selected.*

### BRYCE'S RANGE OF KNOWLEDGE

“James Bryce's range of knowledge and of intellectual interest is so great that he has written the most important book upon the Holy Roman Empire and the most important book upon the American Commonwealth.”

—*John Morley, 'Literature and Politics,' at a banquet of the Royal Academy, London, May 3, 1890.*

James Bryce was born in 1838 in Belfast, Ireland, educated at Glasgow, Oxford and Heidelberg; admitted to bar, 1867; has received honorary degrees from about 20 leading Universities. Died in January, 1922.

### KANSAS CITY, MO.

“I have never seen a city park in this country that equals Swope Park, of Kansas City, and it certainly is unrivaled among the cities of the Old World, so far as my travels have extended. Its strongest appeal to me is its magnificent reaches of wild grass and cool forest. You have developed a site of natural charm into a beautiful city. If I conclude to write a book on American Cities, I will get my inspiration from this beautiful city of yours.”

—*Viscount Jas. Bryce,—before Knife and Fork Club, Kansas City, Mo.*

### IMPORTANCE OF IRISH AND SCOTCH

“I do not suppose that there ever were two people who, considering how small were their numbers, have made a greater noise in the world than the Irish and Scotch.”—*Bryce,—To Society of Penna., Feb., 1909.*

### JOHN MARSHALL

“It is hardly an exaggeration to say that the American Constitution, as it now stands, with the mass of fringing decisions that explain it, is a far more complete and finished instrument than it was when it came fire-new from the hands of the convention. It is not merely their work, but the work of the Judges, and most of all of one man, the great Chief Justice Marshall.”—*Said by Jas. Bryce.*



## TRISTAM BURGES (1770-1853), Rhode Island

### REBUKE TO JOHN RANDOLPH

"All this shall come to pass, to the intent that New England may again become a lair for wild beasts and a hunting-ground for savages. The graves of our parents will be polluted, and the place made holy by the first footsteps of our Pilgrim forefathers become profaned by the midnight orgies of barbarous incantation. The evening wolf shall again howl on our hills, and the echo of his yell mingle once more with the sound of our waterfalls. The sanctuaries of God shall be made desolate. Where now a whole people congregate in thanksgiving for the benefactions of time, and in humble supplication for the mercies of eternity, there those very houses shall then be left without a tenant. The owl, at noon-day, may roost on the high altar of devotion, and the 'fox look out of the window' on the utter solitude of a New England Sabbath.

"New England shall indeed, under this proscribing policy, be what Switzerland was under that of France. New England, which, like Switzerland, the cradle of infant liberty 'was rocked by whirlwinds in their rage;' 'New England shall, as Switzerland was, in truth be 'the immolated victim where nothing but the skin remains unconsumed by the sacrifice;' New England, as Switzerland had, shall have 'nothing left but her rocks, her ruins, and her demagogues.'

"The mind, sir, capable of conceiving a project of mischief so gigantic must have been early schooled and deeply imbued with all the great principles of moral evil.

"What, then sir, shall we say of a spirit regarding this event, as a 'consummation devoutly to be wished?'—a spirit without one attribute or one hope of the pure in heart; a spirit which begins and ends everything, not with prayer, but with imprecation; a spirit which blots from the great canon of petition. 'Give us this day our daily bread;' that, foregoing bodily nutriment, he may attain to a higher relish for that unmingled food, prepared and served up to a soul 'hungering and thirsting after wickedness;' a spirit which, at every rising sun, exclaims, '*Hoide! hoide! Carthago delenda!*' 'Today, today! let New England be destroyed!'

"Sir, divine Providence takes care of his own universe. Moral monsters cannot propagate. Impotent of everything but malevolence of purpose, they can no otherwise multiply miseries then by blaspheming all that is pure and prosperous, and happy. Could demon propagate demon, the universe might become a pandemonium; but I rejoice that the 'Father of God and man' is enough for one universe. Too much! Oh! how much too much for one nation."

In Congress, in rebuke to John Randolph who had interrupted Burges, while speaking, on the tariff, with, "This hatred of aliens, sir, is the undecayed spirit which called forth the proposition to enact the Alien & Sedition Law: I advise the gentleman from R. I. to move a re-enactment of those laws, to prevent the impudent foreigner from rivaling the American seller. New England, what is she? Sir, do you remember that appropriate exclamation,—'*Delenda est Carthago*'?" The above was in answer to this challenge.—*Author.*

In 1811, Burges was elected to the R. I. Legislature; in '15 to the State Supreme Court; from '15 to '25 held the chair of oratory and belles-letters in Brown University, from which he graduated in 1796. Continued in Congress till 1835. His logic and sarcasm won him an unrivaled reputation as a debater. He resumed his law practice in 1836.—*Author.*

## AARON BURR (1756-1836), New York

### BREVITY

"Be terse. The art of selection is the greatest human faculty." (His arguments were made in half hours, never longer).—*Aaron Burr*.

### HAMILTON ON BURR

"Burr was great in little things, and little in great things."—*A. Hamilton*

### CHANCELLOR KENT ON BURR

"Colonel Burr was acute, terse, polished, sententious, and sometimes sarcastic in his forensic discussions. He seemed to disdain illustration and expansion, and confined himself with stringency to the point in debate."

—*Judge Kent, speaking of the Bar in the eighties, or between 1780 and 1790.*

### IDEA OF A DEVIL

"My idea of a devil is composed more of malice than of meanness."

### LAW

"Law is whatever is boldly asserted and plausibly maintained."

### COMPROMISE

"Now move slowly, never negotiate in a hurry."

### "PUT OFF TILL TO-MORROW"

"Never do to-day what you can do well to-morrow; because something may occur to make you regret your premature action."

### MADE SHORT SPEECHES

"He seldom spoke more than a half hour. Asked no favors, and granted none. Hamilton's way was to exhaust a case; giving ample statement to every point; saying everything that could be said in the fullest manner. He would speak two hours, or three hours, enchanting the attention of the jury and the Court, by his fluent and sometimes lofty eloquence. Burr, in replying, would select two or three vulnerable yet vital points of Hamilton's speech, and quietly demolish them, and leave all the other parts of his oration untouched. In a twenty minutes' speech he has been known to completely neutralize the effect of one of Hamilton's elaborate and ornate addresses."—*Parton's Life of Burr, 152.*

### STANDING AT THE BAR OF N. Y.

"On his arrival in N. Y., Colonel Burr seems at once to have taken his place among the leaders of the bar, and he retained that position, for nearly a quarter of a century, though during that period the bar of New York trebled its members. With the single exception of Hamilton, no lawyer in the State held so high a position as he, and none in the country held a higher."—*Parton's Life of Burr, 152.*



## BURR AND HAMILTON'S METHODS AT BAR

"As a lawyer and as a scholar Burr was not inferior to Hamilton. His reasoning powers were at least equal. Their modes of argument were very different. Hamilton was very diffuse and wordy. His words were so well chosen, and his sentences so finely formed into a swelling current that the hearer would be captivated; the listener would admire, if he was not convinced. Burr's arguments were generally methodized and compact. I used to say of them, when they were rivals at the bar, that Burr would say as much in half an hour as Hamilton in two hours, while Hamilton was flowing and rapturous. They were much the greatest men in the United States."

—*Hamilton's History of Political Parties in the State of New York: 1 Parton's Life of Burr, 153.*

## OPINION OF THE CONSTITUTION

In Burr's old age, he said to a gentleman:

"When the Constitution was first framed, I predicted that it would last fifty years. I was mistaken. It will evidently last longer than that. But, I was mistaken only in point of *time*. The *crash* will come, but not quite so quick as I thought."—*1 Parton's Life of Burr, 171-2.*

## TWO YEARS ATTORNEY-GENERAL OF NEW YORK

In 1789, Governor George Clinton appointed Burr attorney-general of New York. He held the position two years, "and its duties," says Parton, "were performed by him with punctilious correctness and efficiency."—*1 Parton's Life of Burr, 174.*

## U. S. SENATOR, 1791

In 1791 he was elected United States Senator over General Schuyler, who was the father-in-law of Alexander Hamilton. "From this time," says Parton, "dates Hamilton's repugnance to Burr, and soon after his letters begin to teem with that repugnance." In whatever direction Burr sought advancement, or advancement sought him, his secret, inveterate opponent was Alexander Hamilton, until at length the politics of the United States resolved itself into a contest between these two individuals.—*Author.*

DECLINED A SUPREME COURT JUDGESHIP ON  
N. Y. SUPREME BENCH

He declined in 1792 a place upon the N. Y. Supreme Court, at the hands of Governor George Clinton.—*1 Parton's Life of Burr, 190.*

## HOW TO READ

"To render any reading really amusing, or in any degree instructive, you should never pass a word you do not understand, or the name of a person or place of which you have not some knowledge. You will say that attention to such matters is too great an interruption. If so, do but note them down on paper and devote an hour particularly to them when you have finished a chapter or come to a proper pause. After an experiment of this mode, you will never abandon it."

—*From letter to his wife, Phila., Dec., 1791. 1 Parton's Life of Burr, 403.*

## MEMORY

"I would not wish you to possess that kind of memory which retains with accuracy and certainty all names and dates. I never knew it to accompany much invention or fancy. It is almost the exclusive blessing of dullness. The mind which perceives clearly, adopts and appropriates an idea, is thus enlarged and invigorated. It is of little moment whether the book, the time, or the occasion be recollected."—*From letter to his wife, Phila., Dec., 1791.; 1 Parton's Life of Burr, 402.*

## AUTHORS

"Of all animals, authors are the vainest; no eulogies of their works can be too gross or too often repeated."—*2 Parton's Life of Burr, 163.*

## HAD REVERENCE FOR JEREMY BENTHAM

Burr had great admiration for Jeremy Bentham and his writings, and they formed a lasting friendship for one another on the former's exile in England, in 1808,—the latter then living in London, above sixty years of age. Upon Burr's visit to Oxford, he praised his services as legislator (with which the professors agreed), but his morals and benevolence, with which they did not. After leaving the place Burr in his Journal noted:

"Though he speaks of Bentham with reverence, and, probably, prays for him, I presume that he thinks he will be eternally damned and I have no doubt he expects to be lolling in Abraham's bosom with great complacency, hearing Bentham sing out for a drop of water. Such is the mild genius of our holy religion."—*2 Parton's Life of Burr, 178.*

## PREFERRED TWO COINS TO ONE

"I have left in cash two half-pence, which is much better than one penny, because they jingle, and thus one may refresh one's self with the music."

—*2 Parton's Life of Burr, 228. (This was said when in desperate straits in Europe).*

## RAISED MONEY BY SELLING CURIOS

"But how did I raise it? The reply contains a dreadful disclosure. I raised it by the sale of my little '*meubles*,' and loose property. Among others, alas! my dear little Gamp's (grandson); it is shocking to relate, but what could I do? The captain said it was impossible to get out of town (Amsterdam) without five hundred guilders (about \$200.) He had tried every resource, and was in despair. The money must be raised, or the voyage given up! So after turning it over, and looking at it, and opening it, and putting it to my ear like a baby, and kissing it, and begging you a thousand pardons out loud, your dear, little, beautiful watch was sold. I do assure you,—but you know how sorry I was. If my clothes had been salable, they would have gone first, that's sure. But heigh-ho! When I get rich I will buy you a better one."

—*From letter to his daughter, Theodosia, upon leaving Amsterdam, 1811.—2 Parton's Life of Burr, 224-5.*



## CHARLES KENDAL BUSCHE (1767-1843), Ireland

### AS AN ADVOCATE

"As an advocate at *nisi prius*, few men won more verdicts. He had tact for which Scarlett was eminent, at the English bar, but he also had genius, eloquence, and wit, which Scarlett had not. John Kemble called him, 'the most perfect actor off the stage'. As a forensic speaker, clearness of statement was his great merit."

—*Mackenzie, in 'Sheil's Sketches, etc.'* 147.

### COMPARED TO CURRAN

"If Busche had avoided the defects into which the ambition and enthusiasm of Curran were accustomed to hurry him, he was not approached in richness of diction, or in that elevation of thought to which that great speaker had the power of raising his hearers with himself. He was often 'led astray', but it was 'by the lights from Heaven.' On the other hand, the more level and subdued cast of thinking and of phrase, which have been adopted by Mr. Busche, are better suited to cases of daily occurrence; and I own that I should prefer him for my advocate, in any transaction which required the art of exposition, and the elucidating quality which is so important in the conduct of ordinary affairs."—*1 Shiel's Sketches, 143.*

### THE FORGIVENESS OF A CUCKOLD HUSBAND.

"It requires obdurate and habitual vice and practiced depravity to overbear the natural workings of the human heart: this unfortunate woman had not the strength farther to resist. She had been seduced, she had been depraved, her soul was burdened with a guilty secret; but she was young in crime and true nature. She could no longer bear the load of her own conscience,—she was overpowered by the generosity of an injured husband, more keen than any reproaches,—she was incapacitated from any further dissimulation; she flung herself at his feet. 'I am unworthy,' she exclaimed, 'of such tenderness and such goodness,—it is too late—the villain has ruined me and dishonored you: I am guilty.'

"Gentlemen, I told you I should confine myself to facts; I have scarcely made an observation. I will not affront my client's case, nor your feelings, nor my own, by common-placing upon the topic of the plaintiff's sufferings. You are Christians, men; your hearts must describe for me; I cannot,—I affect not humility in saying that I cannot,—no advocate can; as I told you, your hearts must be the advocate. Conceive this unhappy nobleman (Lord Cloncurry) in the bloom of life, with high honors and distinctions, enjoying great property, the proud proprietor a few hours before of what he thought an innocent and amiable woman, the happy father of children whom he loved, and loved the more as the children of a wife whom he adored,—precipitated in one hour into an abyss of misery which no language can represent. loathing his rank, despising his wealth, cursing the youth and health that promised nothing but the protraction of a wretched existence, looking round upon every worldly object with disgust and despair, and finding in this complicated woe no principle of consolation, except the consciousness of not having deserved it. Smote to the earth this unhappy man forgot not his character;—he raised the guilty and lost penitent from his feet; he left her punishment to her conscience and to Heaven; her pardon he reserved to himself. The tenderness and generosity of his nature prompted him to instant



mercy,—he forgave her,—he prayed to God to forgive her; he told her that she should be restored to the protection of her father; that until then her secret should be preserved and her feelings respected, and that her fall from honor should be as easy as it might; but there was a forgiveness for which she supplicated, and which he sternly refused; he refused that forgiveness which implies meanness of the person who despised it, and which renders the clemency valueless because it makes the man despicable; he refused to take back to his arms the tainted and faithless woman who had betrayed him; he refused to expose himself to the scorn of the world and his own contempt;—he submitted to misery; he could not brook dishonor.”—*1 Shiel's Sketches, 147-9.*

### HIS ELOQUENCE IN TRIMBLESTON CASE

“Busche held, alternately, the passions, the understanding, and the senses, captive,—willing captives, to the music of his diction, the might of his reasonable, the enchantment of his exquisite, delivery.”

—*Proctor's 'Lawyer and Client,' 37.*

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### LAW AND PUBLIC OPINION

“With us law is nothing unless close behind it stands a warm, living public opinion. Let that die or grow indifferent, and statutes are waste paper, lacking all executive force.”—*Wendell Phillips*

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### WOMAN

“In all ages woman has been the source of all that is pure, unselfish, and heroic in the spirit and life of man. It was for love that Antony lost a world. It was for love that Jacob worked seven long years, and for seven more; and I have often wondered what must have been his emotions when on the morning of the eighth year, he awoke and found the homely, scrawny, bony Leah instead of the lovely and beautiful presence of his beloved Rachel (Laughter). A distinguished French philosopher answered the narrative of every event with the question, ‘Who was she?’ Helen conquered Troy, plunged all the nations of antiquity into war and gave that earliest, as it is still, the grandest epic which has come down through all time. Poetry and fiction are based upon woman’s love, and the movements of history are mainly due to the sentiments or ambitions she has inspired. Semiramis, Zenobia, Queen Elizabeth, claim a cold and distant admiration; they do not touch the heart. But when Florence Nightingale, or Grace Darling, or Ida Lewis, unselfish, and unheralded, peril all to succor and to save, the profoundest and holiest emotions of our nature render them tribute and homage (Applause). Mr. President, there is no aspiration which any man here to-night entertains, no achievement he seeks to accomplish, no great and honorable ambition he desires to gratify, which is not directly related to either or both a mother or a wife (Applause). From the hearth-stone, around which linger the recollection of our mother, from the fireside where our wife awaits us, come all the purity, all the hope, and all the courage with which we fight the battle of life (Applause). The man who is not thus inspired, who labors not so much to secure the applause of the world as the solid and more precious approval of his home, accomplishes little of good to others or of honor for himself. I close with the hope that each of us may always have near us

“A perfect woman nobly planned, to warm, comfort, and command,  
And yet a spirit still, and bright with something of an angel light.”

—*After Dinner Speech by Chauncey M. Depew, N. Y. City, 70th Anniversary of New England Society, Dec. 22, 1875.*



## BENJ. F. BUTLER (1818-1893), Massachusetts

### HOW TO GET RICH

"When a young man has very little money let him buy some property, preferably a piece, however small, according to his means, of improved real estate that is paying rent. He had better buy it when sold at auction, under a judicial sale, paying in cash what he can, giving his notes for the balance in small sums coming due at frequently recurring intervals, secured by a mortgage on the property, and then use all his extra income in paying up these notes. It is always safe to discount your own note, and if the notes come a little too fast, as soon as he gets anything paid, his friends will aid him when he is putting his money where it cannot be lost, and where the property is taking care of the interest, and in a very short time he will find that he has got a very considerable investment. He will become interested in it, save his money to meet his notes, and he will directly come into a considerable possession of property, and hardly know how it came to him. That is, he will have had a motive for saving, and will get the result of that saving, and will not be tempted to enter into speculations. Nothing is so safe for an investment as improved real estate. Nothing is likely to grow in value faster. In the last 50 years 90 per cent of all the merchants and traders in Boston have failed. In the last 50 years 90 per cent of all the business corporations have failed or gone out of business so that their stock has been wiped out. In the last 50 years all the improved real estate on the average has paid its interest and taxes and quadrupled in value. If a young man's father can give him anything to start him in the world he had better invest it in that way and let it accumulate and earn his living, and he will be richer than if he had gone into business. Jay Gould is said to have started from a mouse-trap seller to become a millionaire. Assuming that to be true, he is only one of 60,000,000 of people; and if a young man thinks that he is going to imitate Jay Gould, there are 60,000,000 chances to one that he won't succeed."—*In Boston Herald* Aug. 26, 1887.

### COUNTRY POPULATION.

"The wealth, the prosperity, the steadfastness, the hope of religion, of liberty and of freedom to the world, rests on the producing and on the country population of this Commonwealth and on that of the United States."—*From a Middleton Address.*

### GENIUS IN THE LAW

"I do not believe in genius carrying a man along in the practice of the law, and I want here to record, for the benefit of the young men who come after me in the profession, that diligence, hard study and careful thoughts are the only roads to success in any branch of the law, except that, possibly, a turn for oratory may help the advocate. But the mere advocate, however brilliant, will lose the most cases, although he may win the most verdicts."—*Benj. F. Butler's Book, p. 990.*

Before trying a railroad accident case, he spent a week in a repair shop, coat off, hammer in hand, testing the resisting power of iron; to prosecute a sea captain, defended by Rufus Choate. He spent much time in studying books on scurvy, and recovered a verdict for \$3,000 for negligence on the part of the defendant, in not taking sufficient vegetables, etc., for the voyage.—*Author.*



## HIS BIBLE KNOWLEDGE

"I regret to say that my knowledge of the Scriptures is largely confined to the fact that under the tutelage of my Christian mother I read the Scriptures through very carefully, and was examined upon my reading by her. I also committed the four gospels to memory; having fortunately a retentive one, and was able to recite them when called upon, even to the first 18 verses in our version of the Gospel of St. Matthew, which is very trying as everybody seemed to beget everybody else."

—*Benj. F. Butler, Oct. 1, 1892, in letter to Father Moore, of Holy Cross, Kans.*

Says Lyman Trumbull: "Butler was a man of versatile talents, great resources and executive ability. He was egotistical, had a high opinion of himself, and was not always scrupulous in the means employed to accomplish his ends; but he possessed many good qualities, and it is to be regretted that his ambition to succeed in whatever he undertook should ever have led him to resort to questionable actions. He possessed great ability and rendered his country valuable services, both in military and civil capacity."—*Said upon Butler's death.*

"My cause is before an inferior judge, of an inferior court, of an inferior State!" said Butler to a United States District Judge, of Rhode Island, who ruled out nearly all of the attorney's evidence.

BENJ. F. BUTLER: "Opposition only strengthened him, tho 'often in the wrong direction.'\*\*\* A trial with him was a battle in which every energy was put forth, every nerve strained. Politeness, even humanity, were entirely beside the question."—*F. W. Griffith, of the N. Y. Bar.*

BENJ. R. CURTIS: "After Judge Curtis had presented the case of his client (Andrew Johnson), nothing *more* was said in his behalf, altho' in the five or six closing speeches of his other counsel much *else* was said."—*Benj. F. Butler.*

## JOHN S. HOLMES' RETORT TO BUTLER

John S. Holmes, a distinguished Boston lawyer, once told General Butler, that he (Holmes) was often taken for him (Butler). "Well, what of it?" said Butler. "Why," said Holmes, "I am afraid you will lose your reputation as a lawyer, and I mine as a man."

## BUTLER'S RETORT TO SAM'L J. RANDALL

"General Butler was the leader of the House in 1875, and Sam'l J. Randall, leader of the Democratic side. As the 43rd Congress was about to close, I was with Randall when Butler came up, and Randall asked him to hold a Sunday session. Butler said no, that was not necessary. Randall turned and chaffingly said: 'Oh, that is your New England Puritanism, I suppose. That serves you a good purpose and I expect to meet you some day, Butler, in another and better world.'

"Butler replied in a flash: 'Oh, no Sam; you will be there, as you are here, a member of the Lower House.'"—*Melville E. Stone.*



## WILLIAM ALLEN BUTLER (1825-1902), New York City

### NOTHING TO WEAR

“Miss Flora McFlimsey, of Madison Square,  
Has made three separate journeys to Paris;  
And her father assures me, each time she was there,  
That she and her friend, Mrs. Harris,  
Spent six consecutive weeks, without stopping,  
In one continuous round of shopping;  
Shopping alone, and shopping together,  
At all hours of the day, and in all sorts of weather,  
For all manner of things that a woman can put  
On the crown of her head, or the sole of her foot,  
Or wrap round her shoulders, or fit round her waist,  
Or that can be sewed on, or pinned on, or laced,  
Or tied on with a string, or stitched on with a bow,  
In front or behind, above or below;  
For bonnets, mantillas, capes, collars, and shawls;  
Dresses for breakfasts, and dinners, and balls,  
From ten-thousand-franc robes to twenty-sous frills;  
In all quarters of Paris, and to every store,  
While McFlimsey in vain stormed, scolded, and swore.  
They toted the streets, and he footed the bills!  
And yet, though scarce three months have passed since the day  
This merchandise went, on twelve carts, up Broadway,  
This same Miss McFlimsey, of Madison Square,  
The last time we met was in utter despair,  
Because she had nothing whatever to wear!

“I should mention just here, that out of Miss Flora’s  
Two hundred and fifty or sixty adorers,  
I had just been selected as he who should throw all  
The rest in the shade, by the gracious bestowal  
On myself, after twenty or thirty rejections,  
Of those fossil remains which she called her ‘affections,’  
And that rather decayed, but well known work of art,  
Which Miss Flora persisted in styling her ‘heart.’  
So we were engaged. Our troth had been plighted,  
Not by moonbeam, or starbeam, by fountain or grove,  
But in a front parlor, most brilliantly lighted,  
Beneath the gas-fixtures, we whispered our love.  
Without any romance, or raptures, or sighs,  
Without any tears in Miss Flora’s blue eyes,  
Or blushes, or transports, or such silly actions,  
It was one of the quietest business transactions.  
Well, having thus wooed Miss McFlimsey and gained her  
With the silks, crinolines and hoops that contained her,  
I had, as I thought, a contingent remainder  
At least in the property, and the best right  
To appear as its escort by day and by night;  
And it being the week of the Stuckup’s grand ball—  
Their cards had been out a fortnight or so,  
And set all the Avenue on the tiptoe—  
I considered it only my duty to call,  
And ask if Miss Flora intended to go.  
The fair Flora looked up, with a pitiful air,  
And answered quite promptly, ‘Why, Harry, *mon cher*,



I should like above all things to go with you there  
 But really and truly—I've nothing to wear.'  
 'Nothing to wear! Go just as you are;  
 Wear the dress you have on, and you'll be by far,  
 I engage, the most bright and particular star  
 On the Stuckup horizon'—I stopped, for her eye,  
 Notwithstanding this delicate onset of flattery,  
 Opened to me at once a most terrible battery  
 Of scorn and amazement. She made me reply,  
 But gave a slight turn to the end of her nose,  
 (That pure Grecian feature), as much as to say,  
 'How absurd that any sane man should suppose  
 That a lady would go to a ball in the clothes,  
 No matter how fine, that she wears every day!'

"So I ventured again: 'Wear your crimson brocade'  
 (Second turn up of nose)—'That's too dark by a shade.'  
 'Your blue silk'—'That's too heavy.' 'Your pink'—'That's too  
 light.'  
 'Wear tulle over satin'—'I can't endure white.'  
 'Your rose-colored, then, the best of the batch'—  
 'I haven't a thread of point-lace to match.'  
 'Your brown *moire antique*'—'Yes, and look like a Quaker.'  
 'The pearl-colored'—'I would but that plaguy dress-maker  
 Has had it a week.' 'Then that exquisite lilac  
 In which you would melt the heart of a Shylock'  
 (Here the nose took again the same elevation)—  
 'I wouldn't wear that for the whole of creation.'  
 'Then wear,' I exclaimed, in a tone which quite crushed  
 Opposition, 'that gorgeous toilette which you sported  
 In Paris last spring, at the grand presentation,  
 When you quite turned the head of the nation  
 And by all the grand court were so very much courted.'  
 The end of the nose was portentiously tipped up,  
 And both the bright eyes shot forth indignation,  
 As she burst upon me with the fierce exclamation,  
 'I have worn it three times, at the least calculation,  
 And that and most of my dresses are ripped up!'  
 Here I *ripped out* something, perhaps rather rash,  
 Quite innocent though; but, to use an expression  
 More striking than classic, it 'settled my hash,'  
 And proved very soon the last act of our session.  
 'Fiddlesticks, is it, sir? I wonder the ceiling  
 Doesn't fall down and crush you, you men have no feeling;  
 You selfish, unnatural, illiberal creatures,  
 Who set yourselves up as patterns and preachers,  
 Your silly pretense, why, what a mere guess it is!  
 Pray, what do you know of a woman's necessities?  
 I have told you and shown you I've nothing to wear,  
 And it's perfectly plain you not only don't care,  
 But you do not believe me,' (here the nose went still higher),  
 'I suppose, if you dared, you would call me a liar.  
 Our engagement is ended, sir, yes, on the spot;  
 You're a brute and a monster, and—I don't know what.'

"Well, I felt for the lady, and felt for my hat, too,  
 Improvised on the crown of the latter a tattoo.  
 In lieu of expressing the feelings which lay  
 Quite too deep for words, as Wordsworth would say;  
 Then, without going through the form of a bow,



Found myself in the entry, I hardly know how,  
 On doorstep and sidewalk, past lamp-post and square,  
 At home and up stairs, in my own easy-chair;  
 Poked my feet into slippers, my fire into blaze,  
 And said to myself, as I lit my cigar,  
 'Supposing a man had the wealth of the Czar  
 Of the Russias to boot, for the rest of his days,  
 On the whole, do you think he would have much to spare,  
 If he married a woman with nothing to wear?'

"Since that night, taking pains that it should not be bruited  
 Abroad in society, I've instituted  
 A course of inquiry, extensive and thorough,  
 Of this vital subject, and find, to my horror,  
 That the fair Flora's case is by no means surprising,  
 But that there exists the greatest distress  
 In our female community, solely arising  
 From this unsupplied destitution of dress,  
 Whose unfortunate victims are filling the air  
 With the pitiful wail of 'Nothing to wear!'

"Oh, ladies, dear ladies, the next summer day  
 Please trundle your hoops just out of Broadway,  
 From its whirl and its bustle, its fashion and pride,  
 And the temples of trade which tower on each side;  
 To the alleys and lanes where misfortune and guilt  
 Their children have gathered, their city have built;  
 Where hunger and vice, like twin beasts of prey  
 Have hunted their victims to gloom and despair;  
 Raise the rich, dainty dress, and the fine brodered skirt,  
 Pick your delicate way thru the dampness and dirt,  
 Grope thru the dark dens, climb the rickety stair  
 To the garret, where wretches, the young and the old,  
 Half starved and half naked, lie crouched from the cold;  
 See those skeleton limbs, those frost bitten feet,  
 All bleeding and bruised by the stones of the street,  
 Hear the sharp cry of childhood, the deep groans that swell  
 From the poor dying creature who writhes on the floor;  
 Hear the curses that sound like the echoes of hell,  
 As you sicken and shudder and fly from the door;  
 Then home to your wardrobes and say, if you dare—  
 Spoiled children of fashion, you've nothing to wear!

"And, oh, if perchance there should be a sphere,  
 Where all is made right which so puzzles us here;  
 Where the glare and the glitter, and tinsel of time  
 Fade and die in the light of that region sublime;  
 Where the soul, disenchanted of flesh and of sense,  
 Unscreened by its trappings, and shows and pretense,  
 Must be clothed for the life and the service above,  
 With purity, faith, meekness and love;  
 Oh, daughters of earth! Foolish virgins, beware!  
 Lest in that upper realm, you have nothing to wear."

The above poem was written 1857. Mr. Butler was the son of Benj. F. Butler of N. Y. (1795-1858), Attorney General of the U. S. under President Andrew Jackson.

Wm. Allen Butler became widely known by his poetical satire "Nothing to Wear," of which we give an abridgement, a skit on feminine extravagance. He also wrote a biographical sketch of Martin Van Buren (1871), and two works of fiction, "Mrs. Limber's Raffle" (1876), "Nothing to Wear," and other poems, a collected edition, was published in 1899.

—*Author.*



## JOHN C. CALHOUN (1782-1850), South Carolina

### CALHOUN'S REASON FOR STATE'S RIGHTS

"If you are unwilling we should part in peace, tell us so; and we shall know what to do when you reduce the question to submission or resistance. If you remain silent, you will compel us to infer by your acts what you intend. In that case California will become the test question. If you admit her under all the difficulties that oppose her admission, you compel us to infer that you intend to exclude us from the whole of the acquired Territories, with the intention of destroying irretrievably the equilibrium between the two sections. We should be blind not to perceive in that case that your real objects are power and aggrandizement, and infatuated, not to act accordingly. \* \* \* I have now, senators, done my duty in expressing my opinions fully, freely, and candidly on this solemn occasion. In doing so, I have been governed by the motives which have governed me in all the stages of the agitation of the slavery question since its commencement. I have exerted myself during the whole period to arrest it, with the intention of saving the Union if it could be done; and if it could not, to save the section where it has pleased Providence to cast my lot, and which I sincerely believe has justice and the Constitution on its side. Having faithfully done my duty to the best of my ability, both to the Union and my section, throughout this agitation, I shall have the consolation, let what will come, that I am free from all responsibility."

—*John C. Calhoun, on the Clay Compromise Measures, in 1850.*

According to Senator Jas. H. Kyle: "Calhoun's reasoning would give South Carolina the right to veto an act of Congress. Very well; then each county in South Carolina should have a veto upon the acts of the Legislature; each town, a veto on the behests of a county; and each voter upon the decisions of the town; that one voter in South Carolina should have the Constitutional right to nullify an act of Congress, and no law should be binding which has not received the assent of every citizen."

### COHESIVE POWER OF PUBLIC PLUNDER

"A power has risen up in the government greater than the people themselves, consisting of many and various and powerful interests, combined into one mass, and held together by the cohesive power of the vast surplus in the banks."—*John C. Calhoun, from a speech, May 27, 1836.*

### A MASTERLY INACTIVITY

"In the meantime, our policy is a masterly inactivity."

### THE NEW ENGLAND COLONIES

"By what causes has so inconsiderable a beginning as that of the colonies of New England, under such formidable and apparently almost insurmountable difficulties, resulted, in so brief a period, in such mighty consequences? They are to be found in the high moral and intellectual qualities of the pilgrims, their faith, piety, and confident trust in a superintending Providence; their stern virtues; their patriotic love of liberty and order; their devotion to learning; and their indomitable courage and perseverance. These are the causes which surmounted every obstacle, and which have led to such mighty results."

### WEBSTER, CALHOUN AND CLAY

"Webster was inductive, and convinced the reason; Calhoun, deductive, and dazzled the understanding; Clay, seductive, and carried the votes."

—*Edward Everett.*



## LORD CAMDEN (1714-1794), England

CHARLES PRATT

### GREAT BRITAIN NO RIGHT TO TAX AMERICA

"My searches have more and more convinced me that the British parliament has no right to tax the Americans. I shall not criticise the strange language in which your proposed declaration is framed; for to what purpose, but loss of time, to consider the particulars of a bill, the very existence of which is illegal, absolutely illegal, contrary to the fundamental laws of nature; contrary to the fundamental laws of this constitution, a constitution grounded on the eternal and immutable laws of nature, a constitution whose center is liberty, which sends liberty to every individual who may happen to be within any part of its ample circumference? Nor, my Lords, is the doctrine new; it is as old as the constitution; it grew up with it; indeed it is its support; taxation and representation are inseparably united. God hath joined them, no British Parliament can put them asunder; to endeavor to do so is to stab our very vitals. My position is this, I repeat it—I will maintain it to my last hour, taxation and representation are inseparable; this position is founded on the laws of nature; it is itself a law of nature; for whatever is a man's own, is absolutely his own; no man has a right to take it from him without his consent, either expressed by himself or representative; whosoever attempts to do it, attempts an injury; whosoever does it commits a robbery; he throws down and destroys the distinction between liberty and slavery. Taxation and representation are coevil with, and essential to, the constitution. I wish the maxim of Macheval were followed, that of examining a constitution, at certain periods, according to its first principles; this would correct abuses and supply defects."—*From a speech in House of Lords, in 1765, 5 Lord Chancellors, 253.*

### DISCRETION

"The desertion of a good man is often nothing better than caprice, while the discretion of a bad man is an odious and irresponsible tyranny."  
—*Lord Camden.*

### EARLY POVERTY

"Camden is said to have been the tenant of a garret. Yet from the darkness, poverty and ignominy of this residence he advanced to distinction and wealth, and graced the first offices and titles of Great Britain."—*Wirt's 'British Spy,' 220.*

### HIS COLLEGE EDUCATION

"Lord Camden owed an inestimable debt to Eaton. Not only was his taste refined by the exquisite, if not very profound, scholarship which was a special feature of the place, 'but from his Livy, and from a stealthy perusal of Claudina, he imbibed that abhorrence of arbitrary power which animated him through life.' "—*1 O. G. Trevelyan's 'George III and Charles Fox,' 53.*

### ON MOVING THE TROOPS FROM BOSTON

"King, Lords and Commons, are grand and sounding names, but King, Lords and Commons may become tyrants as well as others. Tyranny in one or more is the same: it is as lawful to resist the tyranny of many



as of one: this has been a doctrine known and acted upon in this country for ages. When the famous Selden was asked, by what statute resistance to tyranny could be justified? His reply was: 'It is to be justified by the custom of England, which is a part of the law of the land.' I will affirm, my lords, not only as a statesman, politician, and philosopher, but as a common lawyer, that you have no right to tax America. No man, agreeably to the principles of natural or civil liberty, can be divested of any part of his property without his consent: and whenever oppression begins, resistance becomes lawful and right."

### SKETCH OF PRATT

He was popular as a young man; took silk at 41 years of age, though he was admitted at 24, having taken a degree at Cambridge. His entrance into practice was slow, though the son of the Lord Chief Justice of England, and bred at Eaton and Cambridge, the associate of scholars and gentlemen, though equally well qualified for the profession, he was for many years without a client. His first real success was accidental, as he was junior in a case with Henley (afterwards Lord Northington), who was suddenly taken ill and the conduct of the case was thrown upon Pratt. The junior opened the plaintiff's case with great clearness and precision, made a most animated and eloquent reply, obtained the verdict, was complimented by the judge, applauded by the audience, and received several retainers before he left the hall. He was made attorney-general, in 1757, at which time he flourished in the court of chancery, and was an overmatch for the heavy equity pleaders, who for twenty years had been sleeping over 'Exceptions and Bills of Revival,' and during four years afterwards there is hardly a reported case in which his name is not mentioned as counsel. In 1762, after holding the attorney-generalship for five years, he was made Chief Justice of the Common Pleas. While in this office for four years, he was very popular, and many busts and prints of him were sold. His fame was carried over Europe, and one of the sights of London, which foreigners went to see, was the great Lord Chief Justice Pratt. In 1765, he became Lord Chancellor, under Pitt, as Prime Minister, by whom he had been befriended for many years. Both were great friends of the American Colonies, and one of the greatest speeches made in their behalf was made by Lord Camden, in 1765. The speech so offending Lord Grenville, the author of the Stamp Act, that he complained of the language used, and wished the House of Commons to bring the printer of the speech to the bar of parliament, for 'a libel upon parliament.' But no further notice was taken of it. George Hardinge in his brief life of Pratt, says of him as an equity judge:

"None have denied that Lord Camden filled his judicial province of this new department, so as to unite all the suitors of this Court, and all others in one opinion concerning him, that superior talents for that seat had never fallen to the share of any man, except Lord Hardwicke, who had so wonderfully enlightened the Court by his judicial experience and penetration. Lord Camden's judgment, like that of his model, was uncommonly sound, and his mode of delivering his opinion persuasive: his apprehension quick, and his explanation of the subject luminous. But no judge, on the other hand, had less conceit of his own undisciplined opinion against the weight of precedents fixed and settled. He likewise avoided the practice of repealing acts of parliament by judicial construction, saying, that, "he could not be more or less enlightened or liberal than his law-giver, had enabled him to be." Unfortunately he seldom wrote his judgments, so that few of them are extant as compositions."

—*Author.*



Was Lord Chief Justice and afterwards Lord Chancellor of England. The above is an extract from his speech in favor of the American Colonies, in seconding Pitt's motion, in 1765. His position greatly offended Lord Grenville, the author of the Stamp Act.

Says Mackenzie in 1 Shiel's Sketches: "He was one of the greatest constitutional lawyers England ever produced."—*Author*.

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#### THOMAS J. SEMMES' PEN-PICTURE OF JOHN MARSHALL

"The criticism of Mr. Jefferson on the opinion of Marshall in the case of *Marbury v. Madison* is not altogether unfounded. The Chief Justice having reached the conclusion that the Supreme Court had no power to issue a writ of mandamus to the Secretary of State, it being an exercise of original jurisdiction not warranted by the Constitution, could have, and perhaps should have, abstained from entering upon the discussion of other questions not necessary to be decided; it is this discussion which Mr. Jefferson sarcastically called an obiter dissertation. However that may be, Marshall vindicated the opinion entertained of him by the Federalists of that day, when he held that an act of Congress repugnant to the Constitution is not law, and that it is the province and duty of the Judicial Department to say what the law is; that the Constitution is to be considered in Courts as the paramount law, and that any other principle would subvert the foundation of all written constitutions, and would give to the legislature a practical and real omnipotence, while the Constitution professed to restrict their powers within narrow limits. Before this decision was made there had been hesitancy and halting among judges as to the power of the Court to declare an act of Congress void because of its repugnancy to the Constitution. This decision invested the Supreme Court with, or rather secured to it, a power which no Court ever before possessed; and the possession of such power has elicited from a distinguished foreigner the remark that the Court is not only a most interesting but virtually unique creation of the founders of the Constitution. Ever since the decision rendered in the case of *Marbury v. Madison*, except during a paroxysm of passion, the eyes of the nation have been fixed on the Court as the guardian of the National Constitution and the harmonious regulator of inter-state relations. The Romans regarded their Praetor 'as the living voice of the civil law;' the Supreme Court is in fact the living voice of the Constitution; that is to say, it voices the will of the people as expressed in the Constitution. The Court is the conscience of the people who, to restrain themselves from hasty and unjust action, have placed their representative under the restrictions of paramount law. It is the spirit and tone of the people in their best moments. It is the guarantee of the minority against the vehement impulses of the majority."

—*Delivered in New York City, February 4, 1890, at Centennial Celebration of the Supreme Court of the U. S.*



## JOHN CAMPBELL (1779-1861), England

### DEFENDING A BAD CAUSE

"Before such men there was no pretense for being lengthy or importunate. Every point made by counsel was understood in a moment, the application of every authority was discovered at a glance, the counsel saw when he might sit down, his case being safe, and when he might sit down, all chance of success for his client being at an end. I have practiced at the bar when no case was secure, no case was desperate, and when, good points being overruled, for the sake of justice it was necessary that bad points should be taken; but during that golden age law and reason prevailed—the result was confidently anticipated by the knowing before the argument began—and the judgment was approved by all who heard it pronounced, including the vanquished party. Before such a tribunal the advocate becomes dearer to himself by preserving his own esteem, and feels himself to be a minister of justice, instead of a declaimer, a trickster, or a bully."

—*Lord Chief Justice John Campbell, in his life of Lord Tenterden.*

LORD ELDON. "Above all the judges of his time."—*Lord John Campbell.*

LORD HOLT. "He was not a statesman like Clarendon, a philosopher like Bacon, nor an orator like Mansfield, yet he fills nearly as great a space in the eye of posterity."—*Lord Campbell.*

LORD JOHN CAMPBELL. "I would much rather have written *Pickwick* than to be Chief Justice of England, or a peer in Parliament."

—*2 Forester's Life of Dickens, 72.*

### LORD STOWELL, THE GREATEST OF THE CANON AND CIVIL LAW

"At last the case of *Dalrymple v. Dalrymple* (Hagg Cons. Rep. 54), which was for many years understood to have finally settled the law by judicial decision. I believe it is universally allowed that Lord Stowell was the greatest master of the civil and canon law that ever presided in our courts, and that is the most masterly judgment he ever delivered. I have read it over and over again, and always with fresh delight. For lucid arrangement, for depth of learning, for accuracy of reasoning, and for felicity of diction, it is almost unrivalled. Although it seems to flow from him so easily and so naturally, it is evidently the result of great labor and research. Luckily he had full leisure to mature his thoughts upon the subject, and satisfactorily to explain to us the authorities and arguments on which his opinion was founded. Your lordships are aware that the case turned upon the validity of a marriage in Scotland, *per verba de praesenti*, without the intervention of a clergyman, and it became essential to consider what was the general law respecting the manner in which marriage was contracted. Your lordships will find he clearly lays it down that there was the same law on the subject all over Europe, and that, till the Council of Trent, by this law there was no necessity for the intervention of a priest to constitute a valid marriage."

—*Lord John Campbell, in Queen v. Mills, 10 Clk. and Fin. 534, in House of Lords, Aug., 1843, and Mar., 1844.*



## MATT H. CARPENTER (1824-1881), Wisconsin

### LOVES AND FRIENDSHIPS

"The loves and friendships of individuals partake of the frail character of human life; are brief and uncertain. The experiences of a human life may be shortly summed up. A little loving and a good deal of sorrowing; some bright hopes and many bitter disappointments; some gorgeous Thursdays, when the skies are bright and the heavens blue, when Providence, being over us in blessings, glads the heart almost to madness; many dismal Fridays, when the smoke of torment be-clouds the mind and undying sorrows gnaw upon the heart; some high ambitions and many Waterloo defeats, until the heart becomes like a charnel house filled with dead affections, embalmed in holy, but sorrowful memories; and then the 'silver chord is loosed,' the 'golden bowl is broken,' 'the individual life, a cloud, a vapor passeth away.' "

—*Reception to the Grand Duke Alexis. Judge J. S. Black thought Carpenter the foremost lawyer at the American Bar.*

JUDGE JNO. B. GIBSON. "The opinions of Chief Justice Gibson, thoroughly understood, would make any man a profound lawyer."

—*Matt H. Carpenter.*

MILITARISM. "I don't believe a man can ever become great by learning to walk a crack with a stiff neck and his fingers on the seams of his pantaloons."—*Matt H. Carpenter.*

### EXORDIUM IN DEFENSE OF TILDEN

"Permit me to state in the outset why I appear here. It is not because Mr. Tilden was my choice for President, nor is my judgment in this case at all affected by friendship for him as a man, for I have not the honor of a personal acquaintance with him. I voted against him on the 7th of November last, and if this tribunal could order a new election I should vote against him again, believing, as I do, that the accession of the Democratic party to power at this time would be the greatest calamity that could befall our country except one, and that one greater calamity would be to keep him out by falsehood and fraud. I appear here professionally, to assert, and if possible, establish the right of 10,000 legal voters of Louisiana who, without accusation or proof, indictment or trial, notice of hearing, have been disfranchised by four persons incorporated with perpetual succession under the name of 'the returning board of Louisiana.' I appear also in the interest of the next Republican candidate for President, whoever he may be, to insist that this tribunal shall settle principles by which if we carry Wisconsin for him by 10,000 majority, as I hope we may, no canvassing board, by fraud, by bribery shall be able to throw the vote of that State against him and against the voice of the people."—*In 1877, before Electoral Commission, at Washington, D. C.*

Being upbraided by his wife for taking the unpopular side, he wrote her: "While I live and have my health, I must walk the mountain ranges of the profession swept by the storm of human hate and passion. Neither self-respect nor my love for you will permit me to seek obscurity and consequent shelter of the deep valleys and smooth meadows."

### CHARLES SUMNER'S EGOTISM

"He (Sumner) identifies himself so completely with the universe that he is not at all certain whether he is a part of the universe, or the universe



a part of him. He is a reviser of the decalogue. You will soon see the Sermon on the Mount revised, corrected and greatly enlarged and improved by Charles Sumner."—*S. S. Cox's 'Why We Laugh.'*

### CATHOLIC CHURCH GIVES NEW TRIAL

Once while in the cloak-room of the Senate, reading the printed record in a case pending in court, a number of other Senators were discussing religion and the differences in the churches. Finally one of them asked Carpenter to what Church he belonged: "None," said he, continuing his reading. Soon another asked what church he would join, if he were going to join any. "The Catholic Church," but continued his reading. Thereupon, he was asked why he preferred that church to any other: "Why, that church believes in Purgatory, and that, as I understand, is equivalent to a chance for a new trial."

—*From John Bolivar Cassoday, on 'Carpenter,' 7 Gt. Am. Lawyers, 529-30.*

### MOSES GOT A REVERSAL

In the W. W. Belknap impeachment there was a certain ruling against Carpenter. Subsequently he sought to have it changed, urging upon Scriptural authority, that Moses, on re-argument, induced the Almighty to reconsider and reverse His former judgment.—*7 Gt. Am. Lawyers, 533.*

### JUSTICE BRADLEY'S TRIBUTE

"I esteemed him (Carpenter) one of the best advocates I ever knew. He was extremely happy in possessing the court, at once, with the pith and gist of his case, no matter how occult or complicated it might be. Although to always do this must have cost him an intense amount of labor and extra investigation, his address did not betray them except in the result, his manners and style having all the outward appearance of being perfectly off-hand and spontaneous. He was, indeed, a thoroughbred lawyer and must have devoted himself, in the early part of his studies, very closely and laboriously to the great classics of the law. It was a real pleasure to see him in any case, and whatever else came, we always knew we should have at least one strong beam of light poured upon the pending case before it was closed."

### MR. JUSTICE FIELD'S ESTIMATE

"Carpenter was one of the strongest and most remarkable men who ever appeared before the Supreme Court of the United States."

### EDMUND'S PUN TRIBUTE TO CARPENTER

Senator Sumner having alluded to Carpenter as a "jester" which aptly described one side of Carpenter's character, Senator Edmunds, by a ready pun, as aptly described the other side of him by declaring that the Senator from Massachusetts probably meant a "suggerer."

### HIS APPEARANCE

"Carpenter was a man of very elegant presence, though his short neck and high shoulders made it impossible for him to be classed as a handsome man. His fine head, with abundant iron-gray hair, tossed carelessly back from his forehead, his keen and expressive mouth, shaded by a black moustache, made a very noticeable portrait, and his voice was so musical and penetrating that it lent a charm to the merest trifle that he uttered."—*2 Perley Poore's Reminiscences, 310-11.*



## HIS JOKE ON THE DEAF ATTORNEY

Carpenter was the attorney for the plaintiff in error in a certain case. When the opposing attorney began to answer his speech, the court declared that it was unnecessary for him to speak further. The attorney was hard of hearing, and did not understand the remark, when Carpenter spoke up and said: "The Court would rather give you the case than hear you talk!"—*J. F. Haskin, in his 'American Government,' 330.*

## JUDGE J. S. BLACK'S EPITAPH

"Among men in public life a closer friendship is scarcely found than that which existed between two great lawyers, the late Senator Carpenter and the late Judge Black. Admiration for the legal learning of one another was the basis of the relation which grew to be one of the strongest possible. Judge Black looked upon Senator Carpenter much as a father looks upon a brilliant son, with a tender charity for all his faults and an affectionate pride in his talents. Judge Black had a lively consciousness of his own greatness as a lawyer. As age came on, and he felt he was losing in legal strength, he said: 'Yes, I am losing a little, but Matt is gaining and between us, we manage to hold a good share of the legal attainments of the world!' Outside the immediate family of Senator Carpenter no one felt the death of the brilliant lawyer more than Judge Black. When the movement for a Carpenter monument was started, Mrs. Carpenter was requested to select some one to write the epitaph to be inscribed upon it. Naturally the selection fell upon his great favorite, Judge Black. A few weeks before his death, Judge Black wrote and sent to Mrs. Carpenter the epitaph which is now published for the first time. We are indebted to Dr. William Fox, the physician of Senator Carpenter, and a warm friend of Judge Black's, for a copy of the memorial, and for an abstract from the letter. Judge Black said:

"You and our own immediate family are responsible for the inscription, if you adopt it; and that responsibility means something, for if it be grossly overdone, or come tardily off, it will mar the better reputation, which a better epitaph would leave him. Therefore, I suggest for your consideration, some of the defects of it. In the start, perhaps, you will think it somewhat extravagant, I mean the words with which it begins. 'The most accomplished orator,' etc. I cannot mend that, for I think it true, and I will have no hand in damning him with faint praise. He *was* first, with a great interval between him and the second. You can better it all through by making it shorter and sharper. But, while I wish it to be as your own taste and judgment may dictate, I warn you against too free a use of your own pruning knife, for you labor under some of the disabilities which unfit me for such composition. Better get a cooler head than either of us. Consult some of your good and wise friends, and see what they advise in the way of modification.

"The religious point puzzled me some. I believe he had the faith, and the hope, as I am sure he had the charity of a Christian, but I do not know, for that is one of the subjects upon which he and I never talked. However the fact may be, the future felicity of a dear friend, whether his life has been good or evil, is such a common-place topic of tombstone eloquence, that I omit it without regret. There are some phrases you may wish to change, do it without hesitation. Some are doubtful, for instance, 'swallowed up,' for which I would have used the weaker figure, 'absorbed,' or something equivalent, only that Paul (not Paul Carpenter, but Paul the Apostle of the Gentiles) is authority for those words in that sense. The arrangement of the lines have no analogy to written or printed compositions. Now, I do not know that there is any rule about it. It is an artistic question, depending, perhaps, on the size, shape or aspect of the surface upon which they are to be



lettered. I think any marshalling of the lines is reasonably good, and it ought not to be much changed for a light reason. Some words ought to be prominent, larger or in stronger relief than others. I have not indicated them."

The Epitaph exhibits Judge Black's great admiration for Senator Carpenter, as an orator and a lawyer, and his deep affection for him as a man. It reads thus:

#### MATTHEW HALE CARPENTER

"The most accomplished orator of his day and generation.  
He addressed no audience that he did not charm, and  
Touched no subject that he did not adorn.  
First among Senators and foremost of statesmen.

He was mighty in word and deed.  
True to his country and his conscience,  
His public career was as stainless as it was lofty.  
He was worthy to stand, as he did, at the head of the legal  
profession,  
Because he was professionally versed in its learning,  
A thorough master of its practical rules, and

Irresistibly powerful in forensic debate,  
Yet his family and all his associates,  
Including the rivals he surpassed,  
Are apt to overlook his shining talents,  
As they recall the generous kindness of his heart, and  
The admiration of the great jurist, the eloquent advocate,  
The brilliant Senator, the matchless political leader,  
Is lost to them and swallowed up in personal  
Affection for the man."

— Copied from scrapbook of A. A. L. Smith, Milwaukee, Wis.,  
Aug. 4, 1896.

Now that both of these great lawyers and warm friends have passed away, the tribute of one to the other will be read with interest, aside from the fact that it will be inscribed on a monument to Wisconsin's brilliant orator.—*Author.*

#### BURST OF ELOQUENCE IN THE McARDLE CASE

"This is the first time in the history of the world that a bench of judges has been invoked to redeem the wrongs, real or imaginary, of eleven millions of people, and to establish the authority of ten pretending governments. Such controversies have been decided by force, not by reason; in the field, not in the courts. Waterloo determined the fate of Napoleon, and he went in sullen silence to his ocean rock, never dreaming of the *habeas corpus*. No lawyer can argue, no judge decide, this cause without a painful sense of the responsibility. Its consequences, upon our children, and generations yet unborn will rejoice or mourn over the principles to be here established. This court has been told, not for the first time, that it is the great conservative department of the government; that if it does not keep constant vigil over the other departments they will rush, as would the planets without the law of gravitation, into 'hopeless and headlong ruin.' There is nothing within the circle of human emotions, unless it be the pleasure with which a lover praises the real or imaginary charms of his mistress, at all to be compared to the delight from our studies and our training that we entertain the utmost reverence for those who must declare what the law is. Within proper bounds this is commendable, but the bar of a free country often have



higher duties to perform, and this adulation of judges may be carried to excess. The judges of this court, like the Apostles of our Lord, are men of like passions and infirmities with other men.

"The bar stands in much the same relation to the court that the prophets held to the ruling powers of the ancient dispensation. It is our duty, when the occasions require to admonish and warn, and that, too, whether courts will listen or whether they will refrain. There are times when general truths should have personal application, times when a prophet in Isreal must say to the king of Israel, 'Thou art the man.' But to do this he should be a prophet and not a mere technical Levite. He should stand among his brethren like Saul among the multitude, head and shoulders above them all. So, too, the counsel to say what ought to be said here, should be one venerated for his age, admired for his wisdom, one who could command audience in this court, as it has been said Wellington commanded attention in the House of Lords, not for elegance or art in arranging an argument, but because he had done the things. He had stood beneath the shell-rent tree, while the fate of Europe was being determined at Waterloo."

—*Ex parte McCardle, 6 Wallace, 318, for the Government to have appeal to U. S. Supreme Court dismissed.*

The positions argued by Carpenter in the above case, constituted the very grounds upon which the reconstruction measures enacted by Congress were founded, and the States relegated back to their place in the Federal Union.—*Author.*

### A WAR SPEECH

"Nearly forty years of profound public tranquility have passed over and blessed our land. We have forgotten to use the weapons of war and have cultivated the arts of peace. We have engrossed our thoughts and enlisted our hearts in the pursuits of agriculture, manufactures, and commerce, and advancing the arts and sciences useful to man. No nation has been blessed, none has so prospered. While we have thus been improving all our mutual interests, amassing wealth at home and accumulating honors abroad, other nations have been vexed and worried with the 'dogs of war;' the war-cloud has darkened the sunny sky of Italy; armies have trampled the vine-clad fields of France, and the recruiting drum has been heard on the green hills of Merry England. \* \* \* We hand out our banner, no dusty rag representing the twilight of seven stars, but the old banner that has floated triumphantly in every breeze; the banner Decatur unfurled to the Barbary States; that Jackson held over New Orleans; that Scott carried to the Halls of the Montezumas; and thereby we mean to say, in no spirit of defiance, but with the firmness of manly resolution, this flag shall wave while an Amercian lives to protect it."

—*At a War Meeting, in Milwaukee, Wis.*

### MASTER OF A COURT-ROOM AND ALL IN IT

A distinguished lawyer in the West, once said that Carpenter might not be the greatest lawyer that ever lived, but certainly no other man was ever born, who could go into court, take possession of judge, jury, witnesses, opposite counsel, all, and drive where he pleased as Matt Carpenter could.

### RUFUS CHOATE

"Mr. Choate has been a member of this body (U. S. Senate); he stood at the head of the legal profession of his native State and had no superior at any bar, English or American. As an advocate he had no peer. In



this department of the profession I do not believe his equal ever lived. A mass of uninteresting facts, the tedious details of the driest subjects, touched by his magic wand stood forth to the quickened apprehension of court or jury with the beauty and freshness of spring, and his nervous oratory and magnetic eloquence moved the tenderest emotions and strongest passions of men, as the wind sways the forest. With international and municipal law, and especially with constitutional law, he was entirely familiar. He was full of learning, but not incumbered by it, for the details of his knowledge were not attached to him like merchandise strapped to a dromedary, but were digested, assimilated, made part of himself by the fusing power of his transcendent genius."

—*From speech in the United States Senate.*

At the age of nine, Carpenter, committed Webster's Reply to Hayne, seventy pages, and declaimed it verbatim, to the delight of his rural audience. He never wrote out his speeches. He could repeat whole books of the Bible, and entire plays of Shakespeare; and could on the instant, deliver every line of the 'Lady of the Lake.' Probably no other lawyer ever read as many books, and when he came upon a passage notable for the strength of its reasoning, he memorized it, then and there, never forgot it, and ever had it at his instantaneous command. Rare passages and choice thoughts, beautifully expressed, were selected and committed to memory, until his mind became a storehouse full of literary treasures, from which he could draw at will.—*Author.*

#### GEORGE F. EDMUNDS' ESTIMATE

"Carpenter possessed a breadth of intellectual grasp and acuteness and discrimination that I have rarely seen equalled, and his power of research and analysis was superb. His capacity for lucid statement and logical deduction was perfect; and to all these he added a wealth of learning, particularly in the law, a richness of voice, a fluency of speech, and an eloquence that made him, one of the most remarkable men of any time."—*Memorial proceedings in U. S. Senate.*

#### THE TURNING POINT IN CARPENTER'S LIFE

"Mr. Carpenter often said that 'circumstances make men,' and as an illustration frequently related how he got his start. Some three years after he settled in Beloit, Wisconsin, to practice law, the public became very much agitated over license or no license of the saloons. There being a college in the town, the faculty took strong ground against the license. At this juncture, young Carpenter was called upon to address the people in favor of license at the town hall. The evening the speech was made, Newcomb Cleveland, of New York, the many times millionaire, came to Beloit to look after his railroad interests in that State as to the construction of the Milwaukee and LaCrosse Railroad. The Company had employed most of the leading lawyers of Milwaukee to represent their side. While Mr. Cleveland was strolling around town, he asked the hotel clerk if there was anything going on that evening which would be of interest to hear. He was told nothing, except a young lawyer was to speak at the town hall on the license question. Mr. Cleveland, for want of something better, strolled in to hear him. About two years later, Carpenter sat in his office reading a magazine, when Mr. Cleveland stepped in and asked if he was Mr. Carpenter. Being told that he was, Mr. Cleveland told him he wanted him to look after his railroad interests in that State; that he would pay him \$6,000 a year, and wanted him to move to Milwaukee at once; that the litigation would probably take



ten years; and that he should retain no one else. Young Carpenter accepted, a contract was drawn, and Mr. Carpenter moved forthwith to Milwaukee with his family and entered upon his work. About eight years were consumed in the various legal contests for Mr. Cleveland's interests in the State and Federal courts, and Mr. Carpenter added: 'If it had not been for that little speech on the license question, I probably would have continued in Beloit for some years, perhaps, during the remainder of my life. If I had remained there, I never would have been Senator. Cleveland brought me into a wider field, and then I studied as no man ever studied before to carry his litigation through successfully. The license speech was the turning point of my life, and made me all I am.'"—*Flower's Life of Carpenter*, 79.

### WEBSTER AND MARSHALL

"Of all the judges, English and American, whose opinions are valuable to the student, Chief Justice Marshall stands pre-eminent. I read the argument of Mr. Webster in *Odgen v. Saunders*, upon the constitutionality of State insolvent laws, as reported by Mr. Everett, and before I knew how the case was decided by the Supreme Court of the United States. While reading this argument, I was carried away captive through paragraph after paragraph, from proposition to proposition, and, when I had finished it, I never thought of looking to see how the case was decided, because I would have made my affidavit that Webster's argument was wholly unanswerable, and, of course, must have been decided with him. And when I found, a year or two after, that the court decided the case the other way, I recollect that I lost confidence in human reasoning for the space of ten days. Nothing finally consoled my disappointment, except the fact that the Chief Justice dissented from the decision of the court, and canonized the argument of Mr. Webster. But for this, I think, I should have concluded that logic was an unsafe guide in the labyrinths of the law; however, I satisfied the wounded pride of my boyish judgment by resolving that Webster and Marshall were greater authority than the rest of mankind combined, and that Webster was right though he did not succeed."

—*Extract from Lecture to Law Students, in Washington, D. C., 1870.*

### ENGLISH REPORTS

"Buy your own State reports, next the New York reports, which will furnish you with ingeniously reasoned cases on every side of every question, and then to relieve the bewilderment of the inexperienced mind, tossed to and fro by reading New York decisions, you need the sobering influence and steady support of the Massachusetts reports. Next, and before the reports of other States, I would buy all the English Common Law and Chancery reports, and continue them with the present series, bringing the decisions of the English courts within a few weeks or their actual delivery."—*From Same Lecture.*

### CONGRESS BOUGHT HIS BRIEFS

"Carpenter had a collection of all the briefs, arguments, etc., presented to the Supreme Court of the U. S. since its organization. These were bound and as the only similar collection extant belonged to the Philadelphia Law Library, were considered so valuable that after his death Congress purchased them for \$8000 for an addition to the Congressional Library."—*Life of Carpenter*, 513.



HAMPTON L. CARSON (1852- ), Pennsylvania

### AMERICAN LIBERTY

"The institutions established by our fathers we hold in trust for all mankind. It was the Pilgrim of Massachusetts, the Dutchman of New York, the Quaker of Pennsylvania, the Swede of Delaware, the Catholic of Maryland, the Cavalier of Virginia, and the Edict-of-Nantes man of South Carolina, who united in building up the interests and in contributing to the greatness and the unexampled progress of this magnificent country. The blood of England, of Holland, and of France, wrung drop by drop by the agony of three frightful persecutions, was mingled by the hands of Providence in the alembic of America, to be distilled by the fierce fires of the Revolution into the most precious elixir of the ages. It is the glory of this era that we can stand here today and exclaim that we are not men of Massachusetts, nor men of Pennsylvania, nor men of Illinois, but that we are Americans in the broadest, the truest, and the best sense of that word; that we recognize no throne, no union of Church and State, no dominion of class or creed.

"American liberty is composite in its character and rich in its material. Its sources, like the fountains of our Father of Waters, among the hills, are to be sought among the everlasting truths of mankind. All ages and all countries have contributed to the result. The American Revolution forms but a single chapter in the volume of human fate. From the pure fountains of Greece, before choked with dead leaves from the fallen tree of civilization; from the rude strength poured by barbaric transfusion into the veins of dying Rome; from the Institutes of Gaius and the Pandects of Justinian; from the laws of Alfred and the Magna Charta of King John; from the daring prowls of the Norsemen and the sons of Rollo the Rover; from the precepts of Holy Writ and the teaching of Him who was nailed to the cross on Calvary; from the courage of a Genoese and the liberality and religious fervor of a Spanish Queen; from the enterprise of Portugal and the devoted labors of the French Jesuits; from the scaffolds of Russell and Sidney, and of Egmont and Horn, from the blood of martyrs and the visions of prophets; from the unexampled struggle of eighty years of the Netherlands for liberty, as well as from the revolution which dethroned a James; from the tongue of Henry, the pen of Jefferson, the sword of Washington, and the sagacity of Franklin; from the discipline of Steuben, the death of Pulaski and De Kalb, and the generous alliance of the French; from the Constitution of the United States; from the bloody sweat of France and the struggle of Germany, Poland, Hungary, and Italy for constitutional monarchy; from the arguments of Webster and the judgments of Marshall; from the throes of Civil War and the failure of secession; from the Emancipation Proclamation and the enfranchisement of a dusky race; from the lips of the living in all lands and in all forms of speech; from the bright examples and deathless memories of the dead—from all these, as from ten thousand living streams, the lordly current upon which floats our Ship of State, so richly freighted with the rights of men, broadens as it flows through the centuries, past tombs of kings, and graves of priests, and mounds of buried shackles, and the charred heaps of human auction blocks, and the gray stones of perished institutions, out into the boundless ocean of the Future. Upon the shores of that illimitable sea stands the Temple of Eternal Truth; not buried in the earth, made hollow by the sepulchres of her witnesses, but rising in the majesty of primeval granite, the dome supported by majestic pillars embedded in the graves of martyrs.



"And thou, great bell! cast from the chains of liberators and the copper pennies of the children of our public schools, from sacred relics contributed by pious and patriotic hands, baptized by copious libations poured upon the altar of a common country by grateful hearts, and consecrated by the prayers of the American people, take up the note of prophecy and of jubilee rung out by your older sister in 1776, and in your journey round the globe proclaim from mountain-top and valley, across winding river and expansive sea, those tones which shall make thrones topple and despots tremble in their sleep, until all peoples and all nationalities, from turbaned Turks and Slavic peasants to distant islanders and the children of the Sun, shall join in the swelling chorus, and the darkest regions of the earth shall be illumed by the heaven-born light of Civil and Religious Liberty!"

—*Delivered at the World's Fair, Chicago, Ill., July 14, 1893, on the Liberty Bell.*

### JOSEPH STORY

"Story swept the bounds of jurisprudence with comprehensive glance, and poured forth the rich accumulations of his industry with flowing pen."—*From Carson's 'History of the Supreme Court of the U. S.'*

### RESOLUTION CONDEMNS JUDGE LANDIS STERNLY

"The resolution, drawn late today by the executive committee of the association, was presented by Hampton L. Carson of Philadelphia, formerly president of the organization. The resolution read as follows:

" 'Resolved, That the conduct of Kenesaw M. Landis in engaging in private emolument while holding the position of a federal judge and receiving a salary from the federal government meets with our unqualified condemnation as conduct unworthy of the office of judge, derogatory to the dignity of the bench and undermining public confidence in the independence of the judiciary.'

"In upholding the honor of the profession of the law," Mr. Carson said in presenting the resolution, "Of what use is it to prescribe canons of ethics if we know that the man on whom the judicial ermine rests has soiled that ermine by yielding to the temptation of avarice and private gain?"

"Here is a federal judge (Landis) who receives \$7,500 a year yielding to the solicitation of commercial interest, sapping his judicial strength by taking \$42,000 a year from baseball players.

"It is simply dragging the ermine in the mire. It may be that impeachment cannot reach him, but one thing cannot escape us, that is, in every judicial circuit and every bar in the country rises the withering scorn of protest against the men who would stain their honor.

"To ignore this thing would have been to leave this convention hanging our heads in shame at the execrable conduct of this judge."

—*Nat'l Bar. Assn. Cincinnati O., Sept. 2, 1921.*



## JAMES C. CARTER (1827-1905), New York

### JAMES C. CARTER'S TILT WITH SIR CHAS. RUSSELL

"Those are the doctrines," said Carter, "of the municipal law everywhere agreed to. There is no dissent that I am aware of in reference to them; and being the universal doctrine of municipal law they may be taken, I apprehend, in the absence of evidence to the contrary, as being the doctrine of international law."

"You must not assume," said Russell, "that I agree to that. You say it is universally admitted."

"I do not assume that you agreed to anything," retorted Carter.

Russell answered: "I should not have interposed, but my learned friend said it was universally admitted!"

Carter closed by saying: "I must understand a permanent exception to that; but I cannot be very well deprived of the use of the word 'general' or 'universal' because it may be held not to include my learned friend. So far as my knowledge extends, those doctrines are universally acceded to."—8 *Great American Lawyers*,—Art. Carter pp. 36-7.

Mr. Carter's seven day argument before the International Tribunal, of the Bering Sea controversy, at Paris, in 1893, in which E. J. Phelps, Jas. C. Carter and Frederic R. Coudert, appeared for the U. S.; and Sir Charles Russell, Sir Richard Webster and Christopher Robinson, for Great Britain.—*Author*.

### PROPER THEORY OF TAXATION

"I am not one of those who believe in what is called a latitudinary construction of the powers of Congress, and who seek to circumscribe within the narrowest limits the power of this tribunal to sit in judgment upon the validity of congressional action. Ours is a government of delegated and limited powers, and I hope the day will never come when this Court will hesitate to declare that the limit has been passed, when it is clearly convinced of the fact. But I also hope that it will forever decline the office of judgment in cases where the question does not assume a purely judicial form; and that it will especially refrain when there is mingled with the question any element of legislative discretion which can not be separated from it. The powers of this court are limited as well as those of Congress, and those limits are already transgressed when it finds itself even *considering* whether this or that view of a question of political economy, or the wisdom of taxation is a sound one.

"These suggestions are all the more weighty and important in those controversies which, like the present, are calculated to arouse the interests, the feelings—almost the passions—of the people, from the subject of public discussion, array class against class, and become the turning points in our general elections. Upon such subjects every freeman believes that he has a right to form his own opinion, and to give effect to that opinion by his vote. Nothing could be more unwise and dangerous—nothing more foreign to the spirit of the Constitution—than an attempt to baffle and defeat a popular determination by a judgment in a law suit. When the opposing forces of sixty millions of people have become arrayed in hostile political ranks upon a question which all men feel is not a question of law, but of legislation, the only path of safety is to accept the voice of the majority as final. The American people can be trusted not to commit permanent injustice; nor has history yet recorded an instance in which governments have been destroyed by attempts of the many



to lay undue burdens of taxation on the few. The teachings of history have all been in the other direction.

"But if an overwhelming majority, in an effort to accomplish what it believes to be justice, finds itself suddenly arrested in its course by another majority of a body of half a dozen or more who happen to hold different opinions upon substantially the same questions, but who assume to speak with a different authority and to utter the voice of law, the consequence can hardly fail to be disastrous to the stability of the law itself. Such a triumphant majority is likely to find its way to the accomplishment of its end over the ruins, it may be, of any constitution or of any court. We have had some experiences in our history of the futility of attempting to convert political into judicial questions, and the results have not added to the authority of this tribunal. It is the part of wisdom for a judicial body to avoid attempts at the solution of problems which must and will be finally settled in another forum."

—*Jas. C. Carter,—In the Income Cases, in reply to George F. Edmunds.*

Mr. Carter, a native of Massachusetts, settled in N. Y., in 1853, entering the office of Kent & Davies.

"He was not a specialist lawyer," says George A. Miller. "He conducted cases involving intricate questions of real property law in which he made himself profoundly familiar with ancient tenures; others in many phases—some of them novel—of commercial law; others involving learning in the foundations of equity jurisprudence; and still others of various branches of admiralty and maritime law. \* \* \* He was the greatest lawyer of his time."

Jos. H. Choate who read law with Mr. Carter, said recently to a Law Class, at Harvard, "Young men, you are now about to go forth; some will go West, following Greeley's advice; others will settle in the great commercial centers. Some of you had better come to New York,—the metropolis of this country. James C. Carter is getting old, and must soon die, and when he does there will be room for a thousand of you there."

## THE NOON OF THE NINETEENTH CENTURY AND ITS CLOSE

"Mr. President, what has become of the spirit, the philosophy, the ideals, which held such firm control at the middle of the century? Discredited at least, if not dismissed, must be our confession. And what have we in their place? Can a calm and just answer to this question that our society both in thought and action is under the control of an enormous pressure of material interests which hold in disdain any appeals to the universal principles of truth and right? And these results have been reached, or are defended, not by appeals to reason, to truth, to science, or to history, but by the assertion that there are *irresistible tendencies* to which we must not only yield, but which we must support and urge forward because they are irresistible, and those who deny their rectitude and struggle against them are stigmatized as impracticable theorists, or traitors to the interests of humanity.

"Against this abandonment of reason and morals, this substitution of brute force or blind fate in the place of truth and right, I utter an humble protest. I am no devotee of the past, or believer, in the finality of any past solutions of human problems, either in morals or politics. It may well be that the changes in human affairs, and especially such portentous ones as are now challenging the attention of mankind, require a revision of old theories. Nations have their duties as well as individuals, which must be performed at whatever sacrifice of inconsistent opinions. This great nation of ours, undoubtedly had duties to the world as well as to



itself, and these must be performed even if we have to cast away the glittering generalities of the Declaration or even Republican government itself.

"But before we discard the long-accepted teachings of the past let us be sure that they have fulfilled their functions and require revision. Let them stand until new ones, reached in a reverent effort to find out what is true and right have been ascertained and established; and meanwhile, let the pressure of material interests, the denunciations of politicians, and the clamors of yellow journalism be set at defiance.

"I appeal to you, Mr. President, and trust you, and your successors after you, will see to it that truth, truth in science, truth in morals, truth in politics, *truth* when exiled from the market place, the legislative hall, the pulpit, or the rostrum shall find a refuge and a sanctuary *here*; *here*, where of old an altar was consecrated to her service, where from of old she has had her arms and her chariot; *here*, where her name has for centuries stood emblazoned, where a priesthood of the great and good have for generations delivered her oracles; here let truth, liberty and justice be held in ever-increasing honor, and assert the everlasting supremacy of the moral over the material world."

—*From address on 50th Anniversary of class of 1850, at Harvard, Delivered by Mr. Carter in 1900.*

### OBEDIENCE TO LAW

"Who does not know that the ultimate support upon which all laws must rest is public opinion? And what is this but saying that law, in order to be obeyed and enforced, must accord with the public standard of justice."—*Jas. C. Carter.*

### IMPROVEMENT OF THE LAW

"The desire to effect an improvement in the law is, surely, in the highest degree praiseworthy; and to connect one's own name with a lasting improvement is a noble ambition. But the danger is that the gratification of the ambition or the vanity will become a motive greatly superior to the wish to effect a solid improvement—a danger to which the law has been in almost every age exposed."

—*Jas. C. Carter—In reference to D. D. Field's Civil Code, which Carter opposed.*

### ORATORY

"It is difficult to prescribe methods by which the art of commanding attention may be acquired. I think the first requirement is that the man should be in *earnest*,—that is, that he should really believe what he says."

### LIBERTY

"Liberty, the first of blessings, the aspiration of every human soul, is the supreme object. Every abridgment of it demands an excuse, and the only good excuse is the necessity of preserving it. Whatever tends to preserve this is right, all else is wrong. To leave each man to work out in freedom, his own happiness or misery, to stand or fall by the consequences of his own conduct, is the true method of human discipline. For myself, I reject that view of the cosmical scheme, which would regard society as the unit for the well-being of which our efforts should be immediately directed, even though individual happiness and perfection were thereby sacrificed. The society most perfect, as a whole, will be that alone which is composed of the most perfect and happy individuals."

—*'Law, its Origin, Growth and Function.'*



## JOHN CATRON (1781-1865), Tennessee

### GAMBLING

“Like other passions which agitate the great mass of the community it lies dormant until once aroused, and then with the contagion of pestilence, it sweeps morals, motives to honest pursuits and industry into the vortex of vice; unhinges the principles of religion and common honesty; the mind becomes ungovernable, and is destroyed to all useful purposes; chances of successful gambling alone are looked to for prosperity in life, even for the daily means of subsistence; trembling anxiety for success in lotteries, at the faro bank or loo table, exclude all other thoughts. Expectation is disappointed; more losses are sustained; the highly excited and desperate feelings are kindled by drunkenness, from which arises a wretch, with a recklessness and desolation of feeling, that the genius of a Shakespeare or a Milton could not, nor can any man, describe. Swindling, forgery, theft—every crime that extreme necessity and out-cast desperation can suggest to a man, lost to all the moral ties, though guarded against, are likely shortly to follow in the train. We ask him who has known the world and ways of men as they are, not as they should be, are these not truths? Have you seen the poisoned arrow pierce the devoted victim? Have you seen him driven to desperation, and his misery in self destruction? Have you yourself felt the sting of this deadly poison? If you have known and felt these, you can, and do, understand us. Who that has gambled much, and to excess, has not partly seen and felt in a thousand shapes the picture of misery here sketched, presenting instances of mental degradation and agony, melancholy as any with which offended Heaven has ever permitted the mind of man to be afflicted? He who imagines this to be extravagant fancy has never sat at a loo table, dealing at ten dollars and forfeiting a hundred for perhaps a week together, or a half week, without sleep or ceasing to play. If he has when young, he will appreciate the feeling (should his head now be gray) that induces him to look back with awe upon the vices and misfortunes of his youth; he may be marked as the earnest advocate of highly penal statutes, to deter his son from similar outrages upon the laws of God, and the laws of this, and, we could hope, of every civilized land. We wish to set forth the wise policy of Tennessee; not by declamation, but by our knowledge of practical truths; still the melancholy desolation of the mind of man in ruins cannot be given as a fact; it must be described. To protect man against the frenzy of his own mind, we have legislation. We are called upon to execute the laws up to their highest penal sanction, that of depriving a citizen of his equal rights to hold office with his fellow men; we find the law constitutional, imperious in its commands, and are determined firmly and fully to execute it. It is our wish as also our duty, to inform the people of Tennessee of the reasons of its enactment, rigorous execution, and the dangers pending over them in case of its violation.”—*In deciding State v. Smith, 2 Yeager's Reports, 271.*

John Catron was born in Wythe, County, Va., in 1781, and died 1865. He was Judge of The Supreme Court of Tenn. from 1824 to 1836. In 1837 he was appointed by Andrew Jackson an Associate Justice of the Supreme Court of U. S., which he held till 1865,—28 years.—*Author.*

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### PORTRAIT OF ABBOTT'S WIFE

“Nowhere in literature could they have found so true a portrait of my wife as in the last 21 verses of the 31st Chapter of Proverbs.”

—*Abbott's Reminiscences, 77.*



## SALMON P. CHASE (1808-1873), Ohio

### AN INDESTRUCTIBLE UNION

"The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

—*In Texas v. White*, 7 *Wallace*, 700.

### THE LEGAL TENDER ACT,—UNCONSTITUTIONAL

"It is not surprising that amid the tumult of the late Civil War, and under the influence of apprehension for the safety of the Republic almost universal, different views, never before entertained by American statesmen or jurists, were adopted by many. The time was not favorable to considerate reflection upon the constitutional limits of legislative or executive authority. If power was assumed from patriotic motives, the assumption found ready jurisdiction in patriotic hearts. Many who doubted yielded their doubts; many who did not doubt were silent. Some who were strongly averse to making government notes a legal tender felt themselves compelled to acquiesce in the views of the advocates of the measure. Not a few who then insisted upon its necessity, or acquiesced in that view, have, since the return of peace, and under the influence of the calmer time, reconsidered their conclusions, and now concur in those which we have just announced. These conclusions seem to us to be fully sanctioned by the letter and spirit of the Constitution."

In *Hepburn v. Griswold*, 8 *Wallace*, 603, in which it was held,—five against three, to the effect that the Legal Tender Act, passed by Congress during his secretaryship and at his instance was unconstitutional. A change in the membership of the Court caused the constitutionality of the Legal Tender Act to be upheld in the Legal Tender Cases, by five against four, Chase dissented.—12 *Wallace*, 457.

Lincoln said of Chase: "Chase is about one and a half times bigger than any other man I ever knew. There is not one man in the Union who would make as good a Chief Justice as Chase. If I have the opportunity, I will make him Chief Justice of the United States." Lincoln accordingly did, in 1864, and he held that office till he died May 1, 1873.

### NOTED FOR HIS GALLANTRY

The late Chief Justice Chase was noted for his gallantry. While on a visit in the South, after the war, he was introduced to a very beautiful woman who prided herself upon her devotion to the "lost cause." Anxious that the Chief Justice should know her sentiments, she remarked, as she gave him her hand,—“Mr. Chase, you see before you a rebel who has not been reconstructed!”

“Madam,” he replied, with a profound bow, “reconstruction in your case, would be blasphemous.”

### HUGH McCULLOCH ON CHASE

“His mind was clear and logical, comprehensive in its grasp, and certain in its conclusions. He was a fine scholar, a master of the English tongue; spoke with ease and distinctiveness; not what might be called a fluent, nor, according to the American idea (which is rapidly changing) an eloquent speaker; but he had few equals in analyzing difficult questions



and making abstruse subjects intelligible. Inclined to be dogmatic, he was nevertheless genial, in social intercourse, and at times fascinating. In manners he was courtly without assumption; in opinion, tenacious without intolerance. He was strong in his convictions, and steadfast in his principles."—*Men and Measures of Half a Century*, 181.

### READING

"The knowledge obtained by bare reading is of very little value. Books must be meditated and talked, to be understood and converted into mental aliment."—*Said by Chase: 5 Great Am. Lawyers*, 342.

### WHY APPOINTED CHIEF JUSTICE

"Lincoln was persuaded to appoint Chase Chief Justice of the Supreme Court of the U. S., by Justice Field and Miller, and Senator Sumner."  
—*Don Piatt*—*Men Who Saved the Union*, 120-3.

### GATH ON CHASE

"Chase failing to be President in 1860 and 1864, played the Teller in the Democratic convention, in 1868 and was cut out by Horatio Seymour. The remainder of his life was in obscure and mystical mutiny against his own fame."—*Said by Gath*, 1898.

### GIDEON WELLES CRITICISM OF

"Chase is cowardly and aspiring, shirking and presumptuous, forward and evasive;—\* \* \* an ambitious politician; possessed of mental resources yet afraid to use them, irresolute, as well as ambitious; intriguing, selfish, cold, grasping and unreliable, when he fancies his personal advancement is concerned."

In reference to Chase not advising and taking a position in the trial of Jefferson Davis.—*See 2 Welles' Diary*, 366.

### LORD CHARWOOD ON CHASE

"Though egotistic, Chase was clever, evidently a pleasant man to work with—a useful minister under a wise chief, though he later proved a harmful one under a foolish chief."—*Life of Lincoln*, 325.

### CHASE AND LINCOLN ON GREENBACKS

"Amasa Walker, the New England financier, originated the idea of the notes issued by the government to the people as currency should bear interest. This, for the purpose of preventing inflation by inducing people to hoard the notes, as an investment, when the demands of trade failed to call them into circulation as a currency, but for the purpose of making them popular. This idea struck David Taylor, of Ohio and he urged Lincoln to put the project into immediate execution. The President listened patiently, said it was a good idea, but advised Taylor to go to Chase, as he was running that end of the machine, and had time to consider the proposition. Chase was seen, who treated the matter coldly, —said it was unconstitutional. This was reported to Lincoln, who told Taylor to go back to Chase, and tell him 'not to bother himself about the constitution, as he was guarding that with great care'. Taylor said there would be no use, as Chase showed by his manner that he knew all about it, and did not wish to be bored by any suggestions. 'We'll see about that,' and taking a card, Lincoln wrote: 'The Secretary of the Treasury will



please consider Mr. Taylor's proposition. We must have money, and I think this a good way to get it.'

"Taylor returned to Chase, was treated more patiently than before, but was cut short, and proposed that they both see the President. This was done,—Chase made a long and elaborate constitutional speech against the measure. 'Chase,' said the President, 'down in Illinois I was held to be a pretty good lawyer, and I believe I could answer every point you have made, but I don't feel called upon to do it. This thing reminds me of a story in the newspaper the other day. It was of an Italian captain who run his vessel on a rock and knocked a hole in the bottom. He set his men to pumping, and he prayed to the figure of a Virgin in the bow of the ship. The leak gained on them. The captain, finally in a fit of rage, seized the Virgin and threw it overboard. Suddenly the leak stopped, the water was pumped out, and the vessel got safely into port. When docked for repairs, the statue of the Virgin Mary was found stuck head foremost in the hole.'

"'I don't see, Mr. President, the precise application of your story,' said Mr. Chase.

"'Why, Chase, I don't intend precisely to throw the Virgin Mary overboard, and by that I mean the Constitution, but I will stick it in the hole, if I can. These rebels are violating the Constitution, to destroy the Union, I will violate the Constitution, if necessary, to save the Union, and I suspect, Chase, that our Constitution is going to have a rough time of it before we get done with this row. Now, what I want to know is, whether, Constitution aside, this project of issuing interest-bearing notes, is a good one?'

"'I must say,' responded Chase, 'that with the exception you make, it is not only a good one, but the only way for us to raise money. If you say so, I will do my best to put into immediate operation the plan, and you will never hear from me any opposition on this subject.'

"The people eagerly accepted the loan which the capitalists were prompt to depreciate and dishonor."

—Don Piatt—*'Men Who Saved the Union,'* 107-9.

## COMPENSATION FOR SLAVES

At the Peace Conference, Feb. 1861, Chase proposed compensation to the owners of fugitive slaves.

## AN INCIDENT IN HIS BOYHOOD

After graduating at Dartmouth, he went to Washington, D. C., and attempted to teach school, but was unsuccessful. He waited patiently for scholars day after day, but they never materialized, and as money was giving out, he applied to his uncle, Dudley Chase, then U. S. Senator from Vermont, for a position under the Government. The Senator, who knew well that a life is blasted when once thrown into the ruts of Department work, refused to assist him, but encouraged him with these words:

"I'll give you a half-dollar to purchase a spade, for then you might come to something, but once settle a young man down in a Government office, he never does anything more,—it's the last you hear of him. I've ruined one or two young men in that way, and I'm not going to ruin you." Thus rebuffed, he soon got a school, and then went into the office of William Wirt, studied law, and in 1830, at the age of 22, was examined, and admitted to practice law, moved to Cincinnati, Ohio, where he afterwards became Governor of the State, 1847, and two years later United States Senator, and 1861, to the Treasury of the U. S., as Secretary, in Lincoln's Cabinet, and in 1864 to the Chief Justiceship of the U. S. Supreme Court.



## JOSEPH H. CHOATE (1832-1917), New York City

### CROSS-EXAMINATION OF A JEW

Mr. Choate was once trying to show that a Jew who had failed in business, did so to defraud his creditors, and this colloquy took place:—

Q. "Mr. Isaacs, did you not fail also in 1875, and pay but 60 cents on the dollar?"

A. "Well, yes, but that was a very hard year, and many others failed, too."

Q. "I did not ask you about the others. But did you not fail in 1867, and pay but 40 cents on the dollar?"

A. "Yes, but that was right after the War, when everyone went under."

Q. "Did you not fail in 1858, and pay your creditors nothing?"

A. (Greatly excited and incensed). "Well, that is *my business*, sir!"

Q. "Yes, I see it is. That's all."

### LAUTERBACH AND CHOATE'S FEES

Choate and Edward F. Lauterbach were associated in the trial of a desperate damage case, in which they recovered a judgment for \$40,000. The case was Lauterbach's who had called in Mr. Choate as associate counsel. Returning to their offices, they debated what they had better charge their client. Lauterbach thought \$2,000 would be about right, and as their client was a Jew, as was he, he had better collect it.

"No," said Choate, "you leave that to me. I have gotten pretty well acquainted with our client, in the trial of the suit, let me attend to that."

In a few days Choate met Lauterbach and handed him his own check for \$4,000, as his half of the fee collected. Upon receiving the same, Lauterbach remarked:—

"Choate, 'almost thou persuadest me to be a Christian'."

### MRS. CHOATE'S SECOND HUSBAND

One evening at a banquet, at which Mr. and Mrs. Choate, were guests, it was agreed that the toast-master should call each man to his feet and then announce his subject. When Mr. Choate was called upon, this question was put to him:—

"Mr. Choate, if you could not be Joseph H. Choate, who would you prefer to be?" Looking across the table, his eyes quickly fell upon Mrs. Choate, and he instantly replied:—"If I could not be myself, I believe I should prefer to be Mrs. Choate's second husband!"

### GREATNESS

"I am one of those who believe that the stuff that a man is made of has more to do with his career than any education or environment. The greatness that is achieved or is thrust upon some men dwindles before that of him who is born great."—*From an Address on Rufus Choate.*

This was true of J. H. Choate, as he was the son of a doctor in Salem, Mass., struggled to go through Harvard, read law for several years in Wm. M. Evart's office, N. Y., to whom he took a letter from his Uncle, Rufus Choate, of Boston—boarded and roomed in an attic, at \$5.00 and \$6.00 per week for four or five years, in his early career as a lawyer.

—*Author.*



## LINCOLN

"Fiction can furnish no match for the romance of Lincoln's life, and biography will be searched in vain for such startling vicissitudes of fortune, so great power and glory won out of such small beginnings and adverse circumstances.

"I lay great stress on his career as a lawyer, much more than his biographers do, because in America a state of things exists wholly different from that which prevails in Great Britain. The profession of the law always has been, and is to this day, the principal avenue to public life; and I am sure that his training and experience in the courts had much to do with the development of those forces of intellect and character which he soon displayed on a broader arena. When he died by the mad-man's hand in the supreme hour of victory, the vanquished lost their best friend, and the human race one of the noblest examples, and all the friends of freedom and justice, in whose cause he lived and died joined hands as mourners at his grave."

—*From an address before the Edinburgh Philosophical Institution, Nov. 13, 1900.*

## RUFUS CHOATE

"In the case of Rufus Choate it was considered quite indispensable that he should reside in Cambridge on account of the influence which his genial manners, his habitual presence, and the *force of his character* would exert over the young men drawn from every part of the United States to listen to his instructions. \* \* \* You may search the biographies of all the great lawyers of the world, and you will find none that surpassed, I think none that approached him, in the rare quality, and power of self discipline. \* \* \* His power of labor was inexhaustable, and down to the last hour of his professional life he never relaxed the most accute and searching study, not of the case in hand only, but of the whole body of the law and of everything of history, poetry, philosophy, and literature that could lend anything of strength and luster to the performance of his professional duties. His hand, his heart, his imagination, were never out of training. Think of the man already walking the giddy heights of assured success, already a senator of the United States from Massachusetts, or even afterwards, when the end of his professional labors was already in sight, schooling himself to daily tasks in law, in rhetoric, in oratory, seeking always for the actual truth and for the best language in which to embody it, the 'precisely one right word' by which to utter it, think of such a man, with all his ardent taste for the beautiful in every domain of human life, going through the grinding work of taking each successive volume of the Massachusetts Reports as they came out, down to the last year of his practice, and making a brief in every case in which he had not been himself engaged, with new researches to see how he might have presented it, and thus to keep up with the procession of the law.

"I regard the magnificent argument which he made on the judicial tenure in the Constitutional Convention of 1853, as the greatest single service which he ever rendered to the profession, and to the Commonwealth, of which he was so proud. You will observe, if you read it, that it differs radically in kind, rather than in degree from all his other speeches, arguments, and addresses."

—*From an Address on Rufus Choate.*

Jos. H. Choate's idea was that Chief Justice Shaw, one of the trustees of Harvard Law-School, wanted Rufus Choate to follow Justice Story, as lecturer at Harvard, and live in Cambridge, one of the greatest tributes to Choate of anything of which he knew.—*Author.*



## RUFUS CHOATE'S LETTER TO EVARTS

"My dear Mr. Evarts:

I beg to incur one other obligation to you by introducing the bearer, a kinsman, to your kindness. He is just admitted to our Bar, was graduated at Cambridge with high honors, all work. (Jos. H. Choate is referred to). He comes to the practice of law with extraordinary promise. He has decided to enroll himself among the brave and magnanimous of your Bar, with a courage not unwarranted by his talent, character, ambition and power of labor. There is no young man whom I love better, or from whom I hope more, or as much, and if you can do anything to smooth the way to his first step, that kindness will be most seasonable, and will yield all sorts of good fruits. Most truly your servant and friend,

"RUFUS CHOATE."

"Boston, Sept. 24, 1855."

## HAMILTON

"Foremost among those (Washington's advisers) in intellectual brilliancy, individual force, constructive capacity, and personal influence was Alexander Hamilton. \* \* \* He stands today, as I think, next to Washington and Franklin among the celebrated Founders of the American Republic."

—*Inaugural Address, Mch. 19, 1904, before Associated Societies of the University of Michigan.*

## THE FEDERALIST

"It is a book which is thought by many competent authorities to be the greatest book that America has given to the world, and which certainly ranks very high among works on constitutional law and principles the world over. For clear and cogent reasoning, plainness and simplicity of thought, earnestness of purpose, and purity of diction and literary style, I know of no American book that surpasses it, and no student of constitutional or public law can be without it."—*Idem.*

## HAMILTON, AS FOUNDER OF CONSTITUTION, AND GREATEST MINISTER OF FINANCE

"It was in this business of convincing and converting a reluctant people to acceptance and support of the new plan of government, that Hamilton performed those prodigious services, and displayed that surpassing genius which establishes his fame as the greatest constitutional lawyer and statesman of that eventful era, and commanded the everlasting gratitude of his country and mankind.

"And further, Hamilton still stands by far our greatest Finance Minister, with whom we may safely challenge any comparison.

"The New York delegation in the Constitutional Convention of the United States, to adopt that instrument, stood forty-six out of sixty-five against the Constitution, with Clinton, the Governor, at its head and in the chair. Hamilton led the minority of nineteen, and after weeks of debate won over the majority almost single-handed and carried the Convention by a vote of thirty to twenty-seven. And, at the time, was but thirty years of age."—*Idem.*

## EMERSON

"I confess that of all the authors with whom I am familiar, I turn always first to him (Emerson) for light and leading and find him more



suggestive, more instructive, more awakening than any other; there are but few subjects dealing with the conduct of life, or the duties of man, of the study of nature, of which he has not treated more or less directly; and anyone who has to take up such a subject for the first time, cannot begin better than by turning to his pages to see what he has said about it."

—*'Ralph Waldo Emerson,' Lecture at the Passmore Institute, June 15, 1903.*

#### SCOTT

"I have often thought that I would rather have been the author of one such book as *Waverley*, or *Kenilworth*, or *Henry Esmond*, or *Romola*, than to achieve any other kind of personal, professional or public fame. The good that these books do us, the rest they give us, the enjoyment they yield us among the hundreds of millions who read the language in which they are written, is absolutely infinite, and the fame that the author of such a book wins rivals, if it does not outshine, all other kinds of fame."

—*From Address before the Edinburgh Sir Walter Scott Club, Nov. 11, 1899.*

#### BURNS, SCOTT, CARLYLE

"Search through history, ancient and modern, where will you find three such wonderful boasts of literature as Burns, Scott and Carlyle? The emerald, the ruby and the diamond, the three great jewels in Scotland's crown."—*Idem.*

#### THE FRAMERS OF THE CONSTITUTION

"They differed in opinion and sentiment on many points but all agreed in a supreme dread of arbitrary power whether it should be exercised by the Executive, the Legislature, or the Judiciary Department, whether by a single man, or by a majority of all, for they considered that the majority without any restrictions upon its power might become quite as dangerous as any other despot. They did not believe with my Lord Coke that absolute despotic power must in all government reside somewhere. They carried this distrust of arbitrary power so far they actually tied the hands of the people whom they regarded as the source of all political power, and deprived them of the right to consider any amendment of the Constitution, until it should be proposed by a vote of two-thirds of both Houses of Congress, on the application of the legislatures of two-thirds of the States, and deprived them of the power of voting directly upon any amendment, which could be ratified by the legislatures or conventions of three-fourths of the States. In other words, the People of the United States, who ordained the Constitution, deprived themselves of the power to modify it by the direct vote of a majority of two-thirds, or even three-fourths of their own number, whether that number should be three millions or eighty millions. They must act deliberately and indirectly through Congress, Legislatures, and Conventions. Truly a rare instance of political self-restraint at the basis of free popular government."

—*'The Supreme Court of the U. S.,' Address before the Political and Social Education League, May 13, 1903.*

#### OUR DUAL SYSTEM OF GOVERNMENT

"The Supreme Court can set aside, declare null and void any act of any Legislature or of Congress itself which comes in conflict with the provisions of the Constitution. I believe it has been exercised by that



Court about twenty-four times in the case of Acts of Congress, and something like two hundred times in the case of State enactments, and it has been the balance wheel upon which our complicated and dual system of government has turned. There we have every foot of our territory and over every living being within it two distinct and independent governments, each supreme and absolute in its own sphere and working in absolute harmony because of this harmonizing function of our great tribunal."

—*'Bench and Bar of England,' at Lincoln's Inn, April 14, 1905.*

### THE PRACTICE OF LAW

"I started in life with a belief that our profession in its highest walks afforded the most noble employment in which any man could engage, and I am of the same opinion still. Until I became an Ambassador and entered the *terra incognita* of diplomacy I believed a man could be of greater service to his country and his race in the foremost ranks of the Bar than anywhere else; and I think so still. To be a priest, and possibly a high priest, in the temple of justice, to serve at the altar and aid in her administration, to maintain and defend those inalienable rights of life, liberty and property upon which the safety of society depends, to succor the oppressed and to defend the innocent, to maintain Constitutional rights against all violations, whether by the Executive, by the Legislature, by the resistless power of the Press, or, worst of all, by the ruthless rapacity of an unbridled majority, to rescue the scapegoat and restore him to his proper place in the world, all this seemed to me to furnish a field worthy of any man's ambition."—*From 'Bench and Bar of England,' at Lincoln's Inn, Apr. 14, 1905.*

### DANIEL WEBSTER

"I have always believed that Mr. Webster, more than any other man, was entitled to the credit of that grand and universal outburst of devotion, with which the whole North sprang to arms in defense of the Constitution and the Union, many years after his death, when the first shot at Fort Sumpter, like a fire bell in the night, roused them from their slumber, and convinced them that the great citadel of their liberties was in actual danger. Differ as we may and must as to his final course in his declining years, the one great fact can never be blotted out, that the great work of his grand and noble life was the defense of the Constitution, so that he came to be known of all men as its one Defender,—that for thirty years he preached to the listening nation the crusade of nationality, and fired New England and the whole North with its spirit. He inspired them to believe that to uphold and preserve the Union, against every foe, was the first duty of the citizen; that if the Union was saved, all was saved; that if that was lost, all was lost. He molded better even than he knew. It was his great brain that designed, his flaming heart that forged, his sublime eloquence that welded the sword, which was at last, when he was dust, to consummate his life's work, and make Liberty and Union one and inseparable forever."

—*At the Unveiling of Rufus Choate's Statue at the Court House, in Boston. Great American Lawyers, 3 vol., 556-7.*

### REPLY TO CROKER

"This cordial reception that you have given to me is almost as great a compliment as I received last week from the voluptuous lips of Mr. Croker himself, for I must say that I regard it as the highest compliment for any respectable citizen to be abused by him (Laughter). And there is a great deal that hangs on the fact that Mr. Croker, for the first time in



this campaign, has opened his lips. The dumb has spoken (Laughter). He never speaks when things are going in a way that suits him, and I ask you why it is that this shrewd and calculating politician, at this late hour in the campaign, has found it necessary to open his lips? Well, this audience looks to me like a good old-fashioned audience, who remember things they have read in the Bible. Croker's speech, and why he spoke, recalls to my mind the familiar story of Baalam's Ass (Laughter). And in two or three points Mr. Croker reminds us of that very celebrated beast of burden. In the first place, until the Ass spoke nobody in the world imagined what a perfect Ass he was (Roars of laughter). If he hadn't spoken he would have passed into history as an average, ordinary, silent Ass, who carried Baalam on his way; but when he spoke he was distinguished over all other Asses in the land (Renewed laughter). But that is not the only way in which Mr. Croker recalls that story. Why did the Ass speak? Do you remember the story? It was because he was frightened, it was because, as the Bible says, he got into a tight place, where he could neither turn to the right nor the left, and, in that situation, when he saw him who bore a flaming sword confronting him, at last the Ass spoke; and it was in the same tight place that Croker spoke when, at last he was afraid of him who bore the sword before him, and you can tell who the young man is that bore the sword."

—*In Reply to Croker that he, Choate, was the attorney for trusts, corporations and rich men; that he had never taken a case for a poor man. Theron C. Strong's Jos. H. Choate, pp. 75-6.*

### REVERENCE FOR PARENTS

"I have never made any important decision without wondering what my father and mother would have said about it."

—*Strong's Life of Choate, p. 11.*

### PHRENOLOGIST FOWLER'S ADVICE TO CHOATE

"Well, supposing I should study law, what then?" asked Choate of Dr. Fowler, who had examined his head.

"Oh, I wouldn't do that," replied Dr. Fowler, with decision. "You will make a great failure if you do." This was during Choate's college days.—*Strong's Life of Choate, p. 11.*

### SELECTION OF A BIRTH-PLACE

"It requires great forecast for a man to select a birthplace of which he shall always be proud; but he must, indeed, be an unreasonable creature who, having America for a continent, Massachusetts for a State, Essex for a County, and Salem for a native Town, is not entirely satisfied. Of course, a man born anywhere can get along somehow."

—*From Address at Salem, Strong's Life, 28.*

### "CHOOSE YE ONE BULLOCK"

"Choose ye one Bullock for yourselves," referring to 1st Kings, Chap. 18, verse 25. (Said by Choate at a banquet, at a New England Dinner, in New York City, at which ex-Governor Bullock, of Massachusetts, was present.

### LAW

"Law is the expression and the perfection of common sense."

—*Jos. H. Choate.*



## REPLY TO EXASPERATED LAWYER

"I can whip six like you," said a worsted lawyer opposed to Choate. The latter replied, looking at him with a profound calmness:

"When I was a boy, my father owned a bull. He was a wonder to fight. He could whip all the cattle in the neighborhood, and did it. But at that he couldn't win a lawsuit."

## GREAT READER

Choate was an omniverous reader, without a trace of intellectual pedantry, he was able to assimilate the most diverse and seemingly mental foods, making them nutritious. His favorite studies were Constitutional and English history. His favorite authors were George Eliot and Thackeray, and he had Shakespeare at his tongue's end. But he read all the popular books of the day, good bad and indifferent, and found something in everything.—*Strong's Life of Choate*, p. 64.

## GUEST OF SENATOR E. O. WOLCOTT

On one of his visits to Washington, he was a guest of Senator Wolcott, of Colorado, as was also the late Thos. B. Reed, of the House of Representatives. The conversation turned upon what some would consider vices, and others, frailties of mankind, and Mr. Choate remarked, "I have never smoked a cigar, never played a game of poker, and never attended a horse race in my life." Senator Wolcott looked pathetically at Speaker Reed and said, "I wish I could say that." Mr. Reed's characteristic and witty response was: "You can, Choate did."

—*Strong's Life*, 89.

## SOME COURT INCIDENTS

"If you say that again, I shall commit you for contempt." said a judge to Choate.

"I have said it once, and it is unnecessary to say it again," replied Choate.

On another occasion, a judge allowed his attention to be diverted from an argument Mr. Choate was making. Mr. Choate stopped, and the judge looked up in surprise. Mr. Choate proceeded:

"Your Honor, I have just forty minutes in which to make my final argument. I shall need not only every second of my time to do it justice, but I shall also need your undivided attention." "And you shall have it," the judge courteously replied.

"No," replied the judge, "this case has been kept waiting long enough, the trial must proceed now."

"But I cannot leave in the midst of a trial before the Surrogate," expostulated Choate.

"I shall order the trial to proceed at once," exclaimed the judge snappishly.

"You Honor," replied Choate, speaking slowly with icy politeness, "undoubtedly has the physical power to order me to proceed with the trial forthwith, but your Honor has not the legal power to order me." The judge flushed with displeasure, but immediately granted an adjournment.

A striking instance of his fearless and independent spirit with the judges was when Recorder Smyth undertook to punish John W. Goff, himself subsequently Recorder, and a Judge of the Supreme Court, for an alleged contempt of court while defending a prisoner. Mr. Choate volunteered his services in the interest of protecting the profession



in doing whatever may be legitimately regarded as necessary in the discharge of duty. Mr. Choate, in presenting the case, declared that Mr. Goff had not committed a contempt because his conduct on that particular occasion was not what Recorder Smyth declared it to be.

"But," interrupted the Recorder hastily, "I saw him do it."

"Then," replied Mr. Choate, quite calmly, "it becomes a question, of course, between your Honor's personal observation, and the observation of a crowd of witnesses who testified to the contrary. Was your Honor ever conscious of being absolutely convinced, from the outset of the trial, that a certain person was guilty? If not, then you are more than human. Was your Honor ever conscious, as the trial proceeded, that it was impossible to conceal your opinion? If not, then you are more than human. Well, what has happened in many Courts, and time and again when it does happen, it arouses the aggressive resistance of every advocate who understands his duty; and he would be false to his trust if it did not arouse him."

The Recorder was evidently embarrassed, and not at all pleased, but saw that a question of fact was raised by Mr. Choate, and that this question of fact involved a question of veracity. The Court then read the lawyers a homily on the duty of the profession with respect to their conduct in the presence of the Court, and terminated the proceedings by taking no further action.—*Strong's Life*, 141-3.

"Mr. Choate, you are arguing contrary to what is stated in your brief."

"Oh, well, I have learned a great deal about this case since that brief was prepared."

Choate was once trying a will case in Rochester, N. Y., and trying to uphold the will, and was examining an old lady, who was the chief witness against him. She testified that the testatrix was a pal and crony of hers, and that she had talked with her just before making the will, and that she looked as if she did not understand what she was doing. The witness was an illiterate person, and Choate tried by questioning to get from her just how she looked. Finally he said to her, "Well, did she look just as I am looking at you now?" "After scanning me carefully," said Choate, "she replied," "Well, yes."—*Strong's Life*, p. 150.

#### CHARGING A CLERGYMAN A FEE

"I always understood, Mr. Choate," the clergyman observed, "that you gentlemen of the Bar were not in the habit of charging clergymen for your services."

"You are much in error," returned Choate firmly, "much in error. You look for your reward in the next world, but we lawyers have to get ours in this."—*Strong's Life*, 151.

#### GEN'L FITZ-JOHN PORTER'S ARGUMENT

Choate replied to Fitz-John Porter's long argument in his own behalf, appearing in full regimentals, with cocked hat, epaulets and spurs, while he indulged in an argument consuming 48 hours. Said Choate:

"We have listened with patience to the remarks of the distinguished Adjutant General of the U. S. Army. His long argument reminds me of the advice once given to the graduating class in the Theological Seminary of Tennessee: 'Now, boys, remember one thing, do not make long prayers; always remember that the Lord knows something.' "

—*Strong's Life*, 155.



## CALL ME A CAB

Said an English flunky, mistaking Choate, for a cabman, while Ambassador: "Call me a cab!" To which Choate responded: "You are a cab!" The nobleman naturally took offense, and explained to his host, but was placidly informed it was his error in mistaking the American Ambassador for a butler. Full of apologies to Mr. Choate, he expressed regret that he did not know he was the American Ambassador.

"Oh," Mr. Choate replied, "pray don't apologize, if I had known whom you were I would have called you a hansom."

## SIDNEY BARTLETT

"Mr. Bartlett was unlike Rufus Choate as one man could possibly differ from another. Cold and sharp, and glittering as steel, he would push aside all that the fancy and imagination of his adversary had brought into the case, and hold the courts to the main point, and the jury to one or two cardinal facts, which would compel them, if the case made it possible, for his side. He was very learned, too, but had never, I believe, been such a student as his more celebrated adversary (Choate), and he had the rare advantage (I may say rare to a great lawyer) of extraordinary business experience and faculties, and an extreme common sense, which, after all, is the thing which ought to govern both Courts and juries. With a vast business always on hand, he never wore himself out by traveling on his nerves, to die at fifty-nine, as his chief opponent did, but lived a long, useful and happy life in the very front rank of the profession, and after arguing an important case in the Supreme Court at Washington, at the age of ninety, went home and died of old age."

—*Martin's Life of Jos. H. Choate, Vol. 1, p. 86.*

## LETTER TO HIS FATHER

"Dear Father:

"I want very much to have a first rate photograph of my father, and as he seems to have some very persistent scruples against submitting to the operation, I want to enlist your aid in my behalf. I think you have a good deal of influence with him, and if you represent the matter to him in its true light, I think you will readily overcome all his objections. He has, you know, now, a large number of descendants in two generations, and is likely to have many more, and they demand some worthy memorial of him. They are as you must have observed, although they are not a demonstrative race, very fond of him, and whether rightly or wrongly they are particularly proud of his good looks. Well, as matters now stand if anything should befall him we should be utterly without any fitting counterfeit of his honored form and features. The immediate occasion of my mentioning the subject to you is just this, that he is going to Boston every day this winter, and if you will just take him by the arm some fine day and lead him into Whipple's Photograph establishment, in Washington Street, you can get for us what we want, and will win for yourself the renewed gratitude of a family who owe their all to you.

Yours very truly,

JOSEPH H. CHOATE."

—1 *Martin's Life of Choate, 215-16.*

## FAVORED STUDY OF CLASSICS

"Our study of the languages was in the main, while at college, limited to get the correct and full meaning out of every sentence, and to do that necessarily required great concentration and accuracy and perseverance, traits of enormous value in any subsequent pursuits, and without which



any real success in them is hardly possible. \* \* \* Accordingly I chose for my special studies Latin and Greek throughout my college course, and never had occasion to regret it, for the same mental exercises that required perfection in those subjects stood me well in hand all through the rest of my life in solving problems of law and diplomacy, or anything else that I had to work upon. I also found that committing to memory, although never required, was of infinite value as a mental discipline, and have always wondered why it has not been more generally kept up. When I graduated I could repeat from memory the whole of the first book of Milton's 'Paradise Lost,' and many other valuable gems of English literature, and I wish that I had continued it until the present day, for I am sure that such a habit continued through a long life would keep the mind well stored with the most precious passages of English literature of all times and of every variety, and would be an infinite solace and satisfaction."

—*From Choate's Autobiography, 1 Martin's Life, 75.*

### INTELLIGENCE OF MASSACHUSETTS

"There are 351 towns in the State of Massachusetts. In those, with the exception of seven, the public has the use of public libraries provided at the public expense. In these libraries there are three and three-quarters millions of volumes, about a volume and a half for each inhabitant of the State, and the circulation in twelve months amounted to seven and two-thirds millions, or three volumes for each inhabitant, men, women and children, and babies in arms. Can you point to any other country under the sun in which that state of things can be said to exist? And is there not a reflex action of the readers and authors upon the readers? Might it not be owing to some such relation as that in these last sixty years there had been authors of such eminence in America? Massachusetts to which I have been referring in connection with this free libraries movement had, however, only led the way, for the last report of the National Bureau of Education to which I have had access showed that there were 4,000 free libraries in America, containing more than 33,000,000 volumes. \* \* \* It is the 'teachableness' of all people who speak the English tongue that constitutes their great prospect for the future. \* \* \* Don Quixote, 'The Pilgrim's Progress,' and 'Compleat Angler and Robinson Crusoe' are the most famous books handed down to the present generation. Time has sifted all literature, but how the united judgment of mankind has centered upon these four books out of all the really wonderful books which had been given the world, and how it has selected these masterpieces and given them such glory, and other valuable works had sunk into insignificance and almost into oblivion, it is really very hard to say. \* \* \* All that is known is that in each case the work was the ripe fruit of a matured judgment, for none of those books was written by young men."

—*To the Author's Club, in London, Feb. 20, 1900. Strong's Life, 340-3.*

### A LOFTY CONCEPTION OF LAW

"So long as the Supreme Court exists to be attacked and defended; so long as the public credit and good faith of this great nation are imperiled; so long as the right of property lies at the root of all civil government is scouted, and the three inalienable rights of life, liberty and the pursuit of happiness, which the Declaration of Independence proclaims, and the Constitution guarantees, are in jeopardy, so long will great public service be demanded of the Bar."

—*From Address to the American Bar Assn., Strong's Life, 134.*



## MULTIPLICATION OF BOOKS

"According to the latest statistics which I have seen there were more than 70,000 different books produced in the year 1898 in Europe, exclusive of Russia and the United States. In Germany, the number was 23,000, France, 14,000, Italy, 9,000, Great Britain, 5,700, and in the United States, about 5,000. So that he who with knowledge is willing to guide others through only a small part of one part of one section of this hopeless labyrinth of books does them a vast service. \* \* \* No nation can appropriate as its own a good book simply because it had been produced within its borders. It became at once the property of the English-speaking race who would have it in all the continents and all the islands of the sea. And as all readers everywhere got the benefit of the brains of all authors, was it a mere fanciful dream, or would it only be realized in the distant future, in the millennium of English literature, that all authors would get the reciprocal benefit of all this reading, without regard to international or colonial limits? \* \* \* The value and influence of great writers of English fiction, such as Scott, Dickens, Thackeray, Jane Austin and George Eliot, could not be overestimated. Their books continued to be issued in large editions on both continents. Scott's delightful romances have found their way into every house where English is read. They can always be read with the same relish and zest as they had been devoured in the eagerness of youth. They were found in the dispatch-boxes of Ministers and Ambassadors, beneath the gowns of Bishops and Judges, in the knapsack of the soldier, the bunk of the sailor, and in the miner's camp. Indeed, Scott has made Scotland, its magnificent scenery, its history, its heroes, and its delightful capital perfectly familiar and dear to all."

—*From Address at Cheyne Hospital Charity, Mar. 18, 1907. Strong's Life, 334.*

## CHOATE'S DESCRIPTION OF CONKLING

"My learned friend has been a little personal. He has seen fit to quote for your entertainment and that of the learned Court and this audience a description of my face and features that he gathered from a newspaper. I do not like to lie under this imputation and I will return it. But, gentlemen, not from any newspaper, oh no! I will paint his picture as it has been painted by an immortal pen. I will give you a description of him as the divine Shakespeare painted it, for he must have had my learned friend in his eye when he said:

"See what a grace is seated on his brow;  
Hyperion's curls, the front of Jove himself;  
An eye like Mars to threaten and command—  
A combination and a form, indeed,  
Where every god did seek to set his seal,  
To give the world assurance of a man.'"  
—*Strong's Life of Choate, 190.*

## GREAT CASES, PRINCIPLES INVOLVED

"The Income Tax cases and that of Neagle who shot Judge Terry, in defending Mr. Justice Field, show his mastery of Constitutional questions; the Bell Telephone cases of patent law; the Leland Stanford and Stewart will cases of testamentary law; the Bering Sea case of international law; the cases of Hutchinson and Loubat against the N. Y. Stock Exchange, of the law of membership in unincorporated associations; the Fitz-John Porter case of martial law; the case of the Republic against the Aurania, and his exposition before the second Hague Confer-



ence of 'immunity of private property at sea,' his grasp of admiralty law; the Gilbert Elevated Ry. cases, involving commercial law; the law of domestic relations and of injuries to persons and property, exhibit him as a master in widely different departments of jurisprudence."

—*Strong's Life of Choate*, 154-5.

### RUFUS CHOATE AS AN ADVOCATE

"Mr. Choate's exuberant eloquence, with a mind richly stored with a vast wealth of reading and knowledge and an unbounded human sympathy made him, I think, the greatest advocate that America has ever known. In the argument of questions of law he was a very close reasoner, with a rich gift of illustration, so that it was almost impossible for him to lose a case that could possibly have been won; but it was his fascinating personality that carried all before him with the jury, he never overlooked a fact or an incident that could by any possibility aid his side of the case, and would form a theory upon the facts presented which would commend itself to his conscience and judgment and win, if it was possible to win, the approval of the jury. His patience, tenacity of purpose, and exceeding good humor would carry the day over any ordinary adversary. He would not only address the jury as a whole body, but would fasten upon each individual jurymen in turn, of whose sympathy he was not already sure, and stick to him until he had mastered him, so that I have no doubt he occasionally won a verdict which any other man would have lost, and which, perhaps, he ought to have lost, altho from a long experience in jury trials I am satisfied that in nine cases out of ten, the jury decide right upon the evidence, whoever tries the case."

—*Jos. H. Choate's Address on Rufus Choate*, 1 *Martin's Life of Jos. H. Choate*, 85-6.

### CHARLES O'CONOR

"Mr. O'Connor was by common consent the foremost of the great lawyers of his day. In power of logic, in keen and incisive criticism, in fierceness of attack and defense, and in the complete mastery of the law he was certainly without a superior."—1 *Martin's Life of Choate*, 114.

### JAMES T. BRADY

"James T. Brady was one of the most delightful men I have ever met. He was a real orator and was largely engaged in defense of criminal cases, altho he was quite equal to any civil procedure that might arise; his striking personality as a witty and jovial Irishman fully made up for his lack of legal learning and entitled him to a place in the front rank. He was one of the dearest and most fascinating of men; always frank and open, having, so far as I could see, nothing to conceal and no desire to conceal anything, and he commanded a popularity far exceeding that which at that time, I think, any of his associates in the profession enjoyed. He was always in demand for great public meetings and never failed to make a first-rate speech."—*Choate's Opinion*, 1 *Martin's Life*, 115.

### WILLIAM M. EVARTS

"Taking him for all in all, Evarts was the quickest witted man that I have known on either side of the water, and in the course of a long life I have met many of the foremost men of intellect and action, both here and in Great Britain. Nothing could possibly escape him, and his mind seemed to flash instantaneously, no matter what was the subject that engaged his attention. He was exceedingly fortunate, too, in being at the height of his powers during the most interesting period of our history.



Evarts was 38 when Choate went into his office, and it so happened that four or five of the greatest and most important causes that have ever engaged the attention of our courts came when he was at the head of the profession, and as such was naturally called upon to take a leading part in them.

"The Lemmon slave case, in the Court of Appeals at Albany, involved most interesting questions in regard to the application of the Fugitive Slave Law, and he was retained by the State of New York as counsel to maintain the right of the alleged slave to his liberty. It happens to few lawyers in a single life to be called on to lead in four such cases as the Geneva Arbitration, the Electoral Commission, the Impeachment of President Johnson, and the trial of the case of Tilton against Beecher. Evarts was on the winning side of all these great causes. \* \* \* Thus it appears that Mr. Evarts easily held to the end of his days the well earned post of the greatest and most famous advocate at the American Bar."—*Choate's Opinion, 1 Martin's Life, 118 and 121.*

### OGDEN HOFFMAN

"Hoffman, who has long occupied the position of 'the great orator of New York,' died very suddenly a few days ago (Choate in a letter to his Mother, May 4, 1856). He began life as a midshipman and has had wonderful success, which was owing solely to his gift of speech. There has hardly been an important criminal case here for twenty years in which he did not appear on one side or the other. But he was a notoriously lazy man and an extravagantly high liver but for which he would have won a still more brilliant and more extended fame."

—*Choate in letter to his Mother; May 19, 1858; 1 Martin's Life, 186.*

### AN ECCLESIASTICAL FUNERAL

"The horrors of an ecclesiastical funeral, may I for one escape! The idea of holding up one's own father as having had a narrow escape from Hell, to his weeping children is such an outrage that I wonder the world has not long since exterminated all these vile priests who practice such arts. When will men learn that Death is as natural and as sure a Providence as Birth, and no more to be dreaded or villified?"

—*1 Martin's Life, 285.*

### DON'T MARRY A LAWYER

"If you wish to live for the holidays, you must next time marry some one else than a lawyer."—*From a letter to his wife, 1 Martin's Life, 291.*

### SUCCESS IN LAW IS A MATTER OF LUCK

"The longer I practice law, and the more success I have, the more it seems to me to depend upon luck and the fancy of people."

—*Said in 1878.*

### THE GIST OF THE INCOME TAX CASE

"The Constitution provides that direct taxes shall be apportioned among the States according to their respective numbers, but this Act levies all taxes upon income, from whatever source derived, indiscriminately upon all alike, without such apportionment. A tax on land is certainly a direct tax within the meaning of the Constitution, and a tax upon the income of land can by no possibility be distinguished from a tax on land itself, for this is a tax on the land from which the rent is derived, and is, therefore, necessarily a direct tax upon the income of



accumulated personal property, and cannot be distinguished in principle from the tax on rents, and these all being found to be direct taxes, and therefore unconstitutionally levied, the Court in annulling them must find that Congress without them would not have enacted the rest of the tax, and therefore must declare the whole act void."

—*The Supreme Court of the U. S. did so decide.*

### SUCCESS

"Constant labor is happiness, and success simply means ability to do more labor, more deeds far-reaching in their power and effect. Such success brings about as much happiness as the world provides. We never know that enough has been done. The truth is that the men whose great efforts have made success possible for themselves are the very last to desire them. There is pleasure in rest after labor. It is gratifying to relax when you really need relaxation, to be weary and to be able to rest. But to enjoy anything you must feel the need of it."

—*2 Martin's Life, 79-80.*

### THE INFLUENCE OF THE DEPARTED

"You know our own dead often exercise a very much more potent influence over us than any of our living associates. Time cannot loosen their hold on heart and mind. In one sense they never come back. In another and actual sense they are always coming back, especially in our hours of peril. We gain more support from them than from any living associate. Just as we hear distinctly the voice of a friend in Boston or Chicago over the telephone, and can tell whether it is a joyful or a sorrowful voice, so through the long distance telephone of time we hear voices with equal distinctness. In dreams—if they be dreams—we see the forms of our own dead. In danger we feel the support of their loving hands."

—*From speech Nov. 13, 1905, in United Charities Bldg., N. Y., in memory of Mrs. Josephine Shaw Lowell.*

### THE THINGS IN THE U. S. WE REVERENCE

"Now, our Declaration of Independence, which the Lord Chancellor seems to have little doubt about, our Constitution of the U. S., which he has no doubt about, are only the natural sequence of Magna Charta and the Petition of Right. We stood for the same principles, we fought the same fight, we gained the same victory. Our Jefferson and Franklin and their associates in declaring independence, our Washington and Hamilton and their associates in organizing the Government of the U. S. and setting its wheels in motion, were only doing for us what Somers and his associates had done for you in 1688. Now you will not be surprised that in fateful events, which meant so much for the welfare of the world, and in which the lawyers took a very great part, these Inns of Court contributed their quota; and that there were five of the signers of the Declaration of Independence who had been bred to the law in the Middle Temple, and three of the framers and signers of the Constitution of the U. S. who had been bred in the same Inn, and one of them was afterwards nominated by President Washington as Chief Justice of the U. S. So you may well imagine with what delight I was informed a day or two ago that I had been made a Bencher of the great American Inn, the Middle Temple. I do not think any American lawyer has ever had such a success as that. They may have won more cases, they may have got more fees, but they never have been made Benchers of any of the Inns of Court."

—*To the Bench and Bar of London, on his departure from England, as Ambassador, to the U. S., Apr. 14, 1905.*



## CHOATE'S LOVE FOR THE LAW

"I will confess that from the beginning to the end of my forty-four years at the Bar, I loved the profession with all the ardor of intensity that that jealous mistress, the law, could ever exact, and was always willing to pay back the debt which, as Lord Bacon says we owe to the profession that honors us. In my younger days I could not resist the attraction of those historic and dramatic scenes and incidents, in the lives of the world's great advocates, which everybody knows. Who would not have given a year's ransom, a year of his life, to have heard Somers, in the case of the Seven Bishops, in a speech of only five minutes, breaking the rod of the oppressor, winning the great cause, and at one bound taking his place, the foremost place, among the orators and jurists of England; or Erskine, the greatest advocate anywhere and of all time, when he dared to brave the mighty Mansfield's admonition that Lord Sandwich was not before the Court? 'I know he is not before the Court and for that very reason I will bring him before the Court.' He entered the tribunal that morning an absolutely briefless barrister, and went out of the Court with thirty retainers in his pocket and followed by a crowd of solicitors engaged in a race of diligence to see who should reach his chambers first. Who would not have given a year of his life to have heard Webster pleading before the Supreme Court of the U. S. for the little college in the hills, where his intellectual life began, and throwing successfully round it the shield of that most beneficent of all constitutional provisions that no State shall pass any law impairing the obligation of contracts?"

—*From Speech in London, Eng., Apr. 14, 1905, on 'The Bench and Bar.'*

## THE LEAGUE OF NATIONS

"I read your article on 'The Monroe Doctrine and the Great War' with great pleasure. But I find it far from easy to *agree wholly* with anybody or anything connected with our relation to the War. I can't agree with you that the Monroe Doctrine had much to do with bringing on the War; nor with Taft and Murray Butler that we should enter into a League to enforce Peace, which I regard as only another name for a League to make more war; nor with Eliot that we should enter into a League *permanent and offensive and defensive* with the Entente Nations to fight Germany and her Allies, because I think that would divide the world into two alliances ready to fight each other as they were before this horrible conflict began; nor with (Earl) Grey for a Federation of pretty much all the Nations."

—*From letter to Moreton Frewen, June 30, 1916.*

## THE WORLD WAR

"I am often asked what is going to be the end of all this. Is it a fact a century of united labors on the part of all the universities of the world, including this great University of Toronto and the McGill University have all been for nothing? Has civilization been thrown to the winds? Has liberty been entirely forgotten? Has justice ceased to be respected among men? And what is to be the end of all this? Well, by and by peace will come. We do not know when or how, but it will come, and the work of the universities will have to be resumed with greater ardor and, I believe, with greater success than ever before. I should like to recommend the motto of my own University of Harvard for general acceptance and as a guide of conduct for all the universities of the world. That motto is '*Veritas*,' the Truth. Harvard has flourished under that watchword for nearly three hundred years. There is only one thing



that can hold civil society together. There is only one rule which can hold the nations of the world together in peace, and that is the law of good faith, and nobody knows it better than the men who are fighting in the trenches on your side and on the other side."

—*From remarks at Toronto University, in Sept., 1915, which conferred the degree of LL.D. upon Mr. Choate.*

#### WM. G. PECKHAM'S ESTIMATE OF CHOATE AS A LAWYER

"The great lawyers," said Wm. G. Peckham, the well-known authority on elevated railroad land damage matters, "who were Choate's predecessors, such, for example, as his relative, Rufus Choate, tried trifling country law suits all their days, with an occasional case of magnitude, but even this involved an amount which would be inconsiderable in the present Choate's practice. So it is with Erskine and Nicholas Hill, and even Daniel Webster. It is frequently remarked, in court circles, that the great lawyers who are Mr. Choate's contemporaries divide among them one-half of the business of the first magnitude, and Mr. Choate has the other one-half himself. Now, why is it? His method goes right home to the human heart of a judge or the heart of a jurymen, just the same as he reaches the centre of the affections of the Germans who go from Tompkins Square to Cooper Institute. Where other lawyers are solemn and portentous, or wild or otherwise unpleasant, Mr. Choate is humorous and human. Other lawyers in all the annals of legal eloquence tried to reach the human nature by some circuitous method, or by some method that human nature balked at. Mr. Choate talks just as high as the heart of the judge or jurymen. He puts on no lofty airs, but often speaks with his hands in his pockets. He does not strive to stir up dark passions. While he is always a little keener than the man in the box or on the bench, yet he is always a brother man to him."

—*This was said by Mr. Peckham, when Choate was at the height of his legal career, in the late eighties of the last century.—Author.*

#### TRIBUTE TO ROSCOE CONKLING

"However we may differ," said Choate, in the trial of the David Stewart v. Collis P. Huntington case, in 1881 (Choate for plaintiff and Conkling for defendant), "one from another, or all us from him, we owe the Senator one debt of gratitude for standing, always, steadfast and incorruptible in the halls of corruption. Shadrach, Meshach and Abednego won immortal glory for passing one day in the fiery furnace, but he has been twenty years there, and has come out without even the smell of smoke upon his garments."

—*The ex-Senator held this compliment in high esteem.—Author.*

#### VISCOUNT JAMES BRYCE'S TRIBUTE

"I can never forget the serene dignity and sweetness of Choate's old age when, at Stockbridge, in the calm softness of an Indian summer, his friends gathered round him and Mrs. Choate, rejoicing to pay their homage, on the occasion of the Golden Wedding, to a life that had rendered such noble service to two great countries; and beside the memory of that softly declining day I place in thought the sunset that came five years later, when, after welcoming the representatives of England and France, he passed from among us happy in the knowledge that that for which he had so earnestly hoped and striven had been achieved, and that his country had taken her stand as the champion of right and liberty in the greatest cause for which nations have ever fought."

—*From letter to the Century Ass'n, Jan. 19, 1918.*



## ELIHU ROOT ON CHOATE

"In this country of popular self-government, however, it did not satisfy him (Jos. H. Choate) to be successful in the trial of causes, or to win the respect and admiration of the Bar alone. To be a great American lawyer in the broadest sense, one must be a great citizen, and Mr. Choate was that. He realized that our system of law striking its roots far back in the customs and struggles in which the liberties of England were developed, shaped by the fathers of the Republic to suit the conditions of a freer life, adapted from generation to generation to meet the new requirements of National growth, rests always upon the foundation of general public conviction that it is fit and adequate to secure justice and to preserve individual liberty. He knew that public respect for law, public confidence in the judicial system through which the law is administered, public faith in the wisdom and rightfulness of those great rules of conduct which we have written into our Constitution for the limitation of official power in its relation to the life, the liberty, and the property of the private citizen, are essential to the maintenance of the most vital rights which from day to day we assert in the courts. He welcomed the privilege of the American lawyer not merely to insist upon the application to his client's case of the principles of American law, but to assert and defend the principles themselves before the great governing body of American citizens who make and unmake the law. He understood that American lawyers cannot rightfully be a separate body cultivating a mystery, that they ought to be an active part of the citizenship of the country sharing in the formation and expression of its opinion, in its social and political life, and by virtue of their special knowledge and training, leaders of opinion among their fellows in the community."

—*From Memorial Address before N. Y. Bar Ass'n., Dec. 20, 1917.*

## A POWERFUL ADVOCATE

"The law reports presented continually accumulating evidence of the most substantial basis of a lawyer's reputation, for the reports of causes argued by him supported the judgment of those who heard or read the arguments that they exhibited a wide range of sound learning, extraordinary discrimination, capacity to divine crucial questions, and power of effective presentation. The reports gave evidence also of an extraordinary proportion of success in the causes tried and argued, continuing through so long a period of years as to be conclusive proof of the possession of those solid qualities of advocacy which alone command enduring success. This great preponderance of success in litigation was notwithstanding the fact that for so many years of his life his conspicuous merit as an advocate brought to him great numbers of difficult and doubtful cases, in which the parties sought to overcome a probability of defeat by superiority of counsel. As the generations of the profession passed, traditions gathered about the path he had traversed,—stories of his great achievements, of brilliant attack and desperate defense, of wonderful cross-examination and masterful argument, of wise and witty sayings, of humor and satire, of imperturbable self-possession and poise, of swift insight, of courage and audacity, told by judges and lawyers and jurors and court officers, were repeated wherever lawyers gathered, and became a part of the common professional knowledge of the history of the Bar."

—*Elihu Root, on Choate, at N. Y. Bar Ass'n., 1917.*

## JOSEPH H. CHOATE'S APPEARANCE

"Nature was very kind to him. She gave him a sound body, a constitution capable of enduring without injury the strain of long continued and severe effort, and a temperament which saved him from



the exhausting effect of worries and fears and passions and vain regrets, and she gave a physical presence most impressive and attractive. He was tall, fully six feet in height, slender and erect in his early years, broad shouldered, and carrying the impression of poise and balanced strength; the leonine head was set perfectly in its place, and his face was luminous even in repose with the beauty of intellect and nobility of character, sublimated and manifestly active and dominant. His voice was clear, pleasing to the ear, and far carrying. I do not recall that he ever strained it, or seemed to be forcing it unduly. He was never oratorical even in passages of greatest force and feeling. His manner was dignified and courtly, but perfectly simple and unaffected, and it was the same everywhere and to everybody. Forty odd years ago, when we were in the beginning of a friendship which has been for me one of the chief satisfactions and joys of life, I used to think that he was the most beautiful and splendid specimen of manhood I had ever seen. I have revised my judgment upon this; for, after the Declaration of War with Germany, when he knew that the manhood and honor of his Country had re-asserted themselves, in the benign and radiant face with its lines of old experience and wisdom, made purer and gentler by trial and high endeavor, still alert with intelligence and feeling, shining with the joy of unselfish patriotism, and in the massive form bowed under the weight of a noble life, there was a beauty surpassing that of conquering youth; and the memory of it is a benediction."

—*Elihu Root, Memorial Address, before N. Y. Bar Ass'n, Dec., 1917.*

#### CHOATE ON IMMORTALITY

(The following reminiscence is given by Judge A. T. Clearwater, of Kingston, N. Y., as he and Choate were sitting in a Pullman on their way to New Brunswick, N. J.,—the seat of Rutgers College, whither Choate was going to be made an LL.D., in Oct., 1916):—

"Somebody, I think Frank Stetson, tells me you are attending a church at Kingston (the N. Y. home of Judge Clearwater) with which your family has been connected for two hundred and fifty years." (Said by Mr. Choate.)

"That is true." (Judge Clearwater.)

"As you are a trustee of Rutgers, I assume you are a Calvinist." (Choate.)

"Well, I was born of a Calvinist family which has attended the Reformed Dutch Church since the Reformation, a church which I have attended from my infancy, and I suppose I am a Calvinist." (Clearwater.)

"Then you believe in the immortality of the soul?" (Choate.)

"You remember Stedman being at Franzen's studio (at Bar Harbor) when that subject was discussed; well, when that portrait which you reviled was sent to my home at Kingston, Stedman and Franzen came up to visit us, and while they were there Stedman received from Thomas Wentworth Higginson a letter written by the Colonel on his eighty-fourth birthday in answer to one which Stedman had written congratulating him upon the event, and in that letter Colonel Higginson said that as the years went by, and the shadows lengthened, more and more he thought of the great question of the immortality of the soul. He had read the Darwins, Huxley, Spencer, Tyndall, Haeckel, and the other evolutionists and materialists, and there was a time in his life when he had discredited any notion of survival after death. Subsequently he had oscillated like a pendulum from unbelief to belief, and back again, but now as the time was approaching when he finally must solve the great problem, his mind was at rest. He believed that the soul of man survived physical death." (Clearwater.)

"Clearwater, I have pondered much and long over this great question. I, too, have read the evolutionists and the materialists, the ancients and



the moderns. You know I was born and brought up in Salem, a singularly puritanical community, and always the atmosphere, spiritual and intellectual of Salem has to some extent influenced my life, but I, too, am of the view of Colonel Higginson, and have concluded, as I soon must solve that grave question, that man does survive physical death, that his soul is immortal. Have you ever thought, as you worship in that old church at Kingston, that possibly the spirits of your long line of ancestors also were present? Don't misunderstand me, I don't believe for a moment there is any communication between the spirits of the departed and the living, but it may be possible that they do frequent the scenes of their former activities, especially the place where they worshipped." (Choate.)

"Choate went on to talk most beautifully of the consolation afforded by a belief in immortality, of the emptiness of a life where such a belief was absent, of the vanity of human wishes and ambitions, the shallowness of worldly honors, and the absence of incentive to high and better living if man were destitute of a conviction that his soul was immortal." (Clearwater.)—*Martin's Life of Choate*, 416-18.

### CONDITIONS OF SUCCESS

"What was the first condition of success? I have been a workman myself all my days. I have not worked with screws and bolts and machinery, but I have worked at the law, and believe that the same qualities that account for success in one profession account for it in another. The one quality that cannot be dispensed with, that is indispensable, if a man is to advance, is absolute, incessant, undying tenacity of purpose. Benjamin Franklin, whose beginning was as humble as that of Stephenson, but who lived to have it said of him that he 'snatched the lightning from the clouds and the scepter from the tyrant,' laid down some other rules for the attainment of success, such as temperance and frugality, and these rules are as applicable now as any time before. But success was not everything. Man wanted happiness as well, and the thing which conduced to this more than anything else was the cultivation of reading. Let workingmen, especially, cultivate this taste in themselves and in their family life, and nothing would do more to promote happiness of themselves and those around them."

—*Address at the Crewe Mechanical Institute, Eng. Strong's Life of Choate, J. H., 332-3.*

Jos. H. Choate, Salem, Mass., 1832-1917. Graduated from Harvard, 1852, from its law department, 1854; admitted to membership in the firm of Evarts, Southmayd & Choate, 1859; appeared as counsel in many noted cases—e. g., The Income Tax Case, The Tilden & A. T. Stewart will cases and the Leland Stanford, Vanderbilt and Stokes will cases. Was the 5th child and 4th boy of Dr. George Choate; began to read at three years of age; his first fee was \$2. He earned with Butler, Evarts & Southmayd, the first year \$500, the next \$800, and eventually became a partner; upon his death his law library was appraised at \$8,892, and his general library contained 2,824 vols.; among the \$2,700 worth of rare old wines in his cellars, in his own house, were 3 bottles of port vintage of 1715; more than 100 bottles of Madeira of 1836; many bottles of champagne of 1870 and 1874. His estate was appraised at \$4,867,879.

—*Author.*



## RUFUS CHOATE (1799-1859), Massachusetts

### AMERICA'S PAUCITY OF BOOKS

"It has been often said that 'Gibbon's History' could not have been written here for want of books. I suppose that Hallam's 'Middle Ages' and his 'Introduction to the Literature of Europe' could not. Irving's 'Columbus' was written in Copenhagen. See how this inadequate supply operates. An American mind kindles with a subject; it enters on an investigation with a spirit and with an ability worthy of the most splendid achievement; goes a little way, finds that a dozen books — one book, perhaps — are indispensable, which cannot be found this side of Göttingen or Oxford; it tires of the pursuit, or abandons it altogether, or substitutes some shallow conjectures for a deep and accurate research. and there is the end."

—*From an Address on the Smithsonian Institute, United States Senate, in advocating a great library like the Bodleian, at Oxford.*

It is said that Carlyle gathered together nearly 2,000 books to write his 'Frederick the Great.'—*The Author.*

### A NATURAL ACTION

"Nonsense! You might as well drop the Greek alphabet on the ground and expect to pick up the Iliad."

—*Said Choate, when someone said, a thing was not natural; and he further said,—“Naturally, a man would walk down the streets with his pantaloons off.”*

### CROSS-EXAMINATION

"Never cross-examine any more than is absolutely necessary. If you don't break your witness, he breaks you; for he only repeats over in stronger language to the jury his story. Thus you only give him a second chance to tell his story to them. And besides by some random question you may draw out something damaging to your own cause."

—*Parker's 'Reminiscences of Choate,' 154.*

### DEMOSTHENES

"Demosthenes was a greater orator than Cicero. \* \* \* He had in addition to iron logic and massive reason, an awful vehemence, perfectly tempestuous and boisterous; a diction, every word of which was clean cut and sterling, like stamped gold; a harmony of numbers also. Legare's article in the New York Review on him is the best thing ever written in English about him. He was very commonsense and straightforward."

When Hillard said that he thought Demosthenes was somewhat of a humbug, "No such thing," said Choate. "Why," said Hillard, "the speech for the crown isn't the greatest thing on earth. Webster's Hayne speech was as great." "No," said Choate, "the Gothic language could not make such a speech as the Oration on the Crown. It hasn't got words to make it out of, in the first place; and then consider, also, that it was a defense of the policy Demosthenes had pursued for thirty years. \* \* \* The force of his genius and the fire of his mind and character broke through and conquered all,"

—*Parker's Reminiscences of Choate, 82, 245, 284, 296.*



## CICERO

"Cicero, especially, was his idolatry as a man, an orator and a writer." says Parker. Said Choate:—"Cicero said he never talked without trembling, until his own voice reassured him. \* \* \* He stocked his vocabulary by translating Greek into Latin. \* \* \* This head of Cicero is perfect. (He had busts of Demosthenes and Cicero, and engravings of Webster and Everett, in his library.) He was a true literary man, but early leaned towards oratory. \* \* \* Cicero I have never read without being encouraged and strengthened; his views of life are always healthy and cheerful and sound. He was *vastly* vain. In one of his letters to Atticus, he says—'I spoke with a *divine power* to the Senate. There was never anything like it.' \* \* \* His age is the *descending* age of Rome. And there is a vain sadness through it all. \* \* \* He often fainted after speaking. He must be held the *second best orator* who ever spoke in all the world".

## TACITUS

"Tacitus' was a far richer and more compact style than Cicero's; his was a *spoken* style; but Tacitus was the Macaulay of antiquity. \* \* \* He was too deep and capacious a nature to be content. He was deeply learned in Roman history, and, therefore, impregnated with the swelling sentiments of Roman history and grandeur. \* \* \* You ought to read Tacitus over and over again to catch his idiom—a certain exact fidelity to the original is essential to improve it. In the Annals, particular lives are more valuable."

## EDMUND BURKE

"Mind that Burke is the fourth Englishman—Shakespeare, Bacon, Milton, Burke. No Englishman, or countryman of ours has the least appreciation of Burke. Out of Burke might be cut fifty Mackintoshes, one hundred and seventy-five Macaulays, forty Jefferys, and two hundred and fifty Sir Robert Peels, and leave him greater than Pitt and Fox together."—*From letter to Charles Sumner, probably in 1844.*

## READING

"Let the case of a busy lawyer testify to the priceless value of the love of reading. He comes home, his temples throbbing, his nerves shattered from a trial of a week, surprised and alarmed by the charge of the judge, and pale with anxiety about the verdict of next morning. With a super-human effort he opens his book, and in the twinkling of an eye he is looking into the full 'orb of Homeric or Miltonic song;' or he stands in the crowd—breathless, yet swayed as the forest or the sea by winds—hearing and to judge the Pleadings for the Crown; or the philosophy which soothed Cicero or Boethius in their afflictions, in exile, prison, and the contemplation of death, breathes over his petty cares like the sweet south; or Pope or Horace laughs into good humor; or he walks with Aeneas and the Sibyl in the mild light of the world of the laurelled dead; and the court-house is as completely forgotten as the dreams of a pre-adamite life. Well may he prize that endeared charm, so effectual and safe, without which the brain had long ago been chilled by paralysis, or set on fire of insanity!"—*1 S. G. Brown's Life of R. Choate, 477.*

## SIR JAMES SCARLETT

"Scarlett was altogether the greatest advocate in England of modern times."—*Parker's Reminiscences of Choate.*



## MATT CARPENTER ON CHOATE

"Mr. Choate has been a member of this body (U. S. Senate); he stood at the head of the legal profession of his native State and had no superior at any bar, English or American. As an advocate he had no peer. In this department of the profession I do not believe his equal ever lived. A mass of uninteresting facts, the tedious details of the driest subjects, touched by his magic wand, stood forth to the quickened apprehension of court or jury with the beauty and freshness of spring, and his nervous oratory and magnetic eloquence moved the tenderest emotions and strongest passions of men as the wind sways the forest. With international and municipal law, and especially with constitutional law, he was entirely familiar. He was full of learning, but not encumbered by it, for the details of his knowledge were not attached to him like merchandise strapped to a dromedary, but were digested, assimilated, made part of himself by the fusing power of his transcendent genius."

—*Matt. H. Carpenter, in the U. S. Senate.*

Carpenter had read law with Choate, who went the pupil's security for \$1,000 worth of law books, when the young lawyer moved to Beloit, Wis.; and further supported Carpenter for nearly two years, when the latter was nearly blind from over study.

## COMPROMISE

"Why should we not engage ourselves to the finality of the entire series of measures of compromise? \* \* \* The American people know, by every kind of evidence by which such a truth ever can be known, that these measures, in the crisis of their time, saved this nation. I thank God for the civil courage which, of all things dearest in life, dared to pass and defend them and 'has taken no step backward.' I rejoice that the healthy morality of the country, with an instructed conscience, void of offence towards God and man, has accepted them. Extremists denounce all compromises ever. Alas! do they remember such is the condition of humanity that the noblest politics are but a compromise, an approximation—a type—a shadow of good things—the buying of great blessings at great prices? Do they forget that the Union is a compromise, the constitution—social life—that the harmony of the universe is but the music of compromise, by which the antagonisms of the infinite Nature are composed and reconciled? Let him who doubts—if such there be—whether it were wise to pass these measures, look back and recall with what instantaneous and mighty charm they calmed the madness and anxiety of the hour! How, in a moment, the uninterrupted and parted currents of fraternal feeling reunited! Sir, the people came together again as when, in the old Roman history, the tribes descended from the mount of Secession—the great compromise of that Constitution achieved—and flowed together behind the eagle into one mighty host of reconciled races for the conquest of the world. Well, if it were necessary to adopt these measures, it is not necessary to continue them? \* \* \* Why not, then, declare the doctrine of their permanence? In the language of Daniel Webster, 'Why delay the declaration? Sink or swim, live or die, survive or perish, I am for it'."

—*Choate in the Whig Convention of 1852, in which he was for Webster for President.*

## DANIEL WEBSTER

"Webster is either very ordinary in discourse, or very great. I have heard him *for a few minutes*, when there could be no greater learning, or literature, where there is no great thought to be elaborated, or lofty



sentiment to be pronounced, he halts and drags. This is the case even in his very best orations. Out of law and statesmanship, he is not rich, and we have in him no sparkle or gleam of allusion and reference to quicken our fancies; but he flies high, or else creeps sluggishly along. \* \* \* There has been no day in his life, for thirty years, that his mind hasn't been laboriously and seriously exercised. Eight or nine hours a day enough for all work, legal and literary. \* \* \* He has been occupied in politics and general reading a good deal. His mind is far richer than Story's—more ideas; though Story is great."

## THE LAW

"Unless one takes hold of the law with a determination to be a *great lawyer*, it's a poor concern, and uninteresting; but a love of it *may be begotten*. After mastering its rudiments, it is, with all its rewards, as interesting and attractive as any other department of serious, laborious thought. \* \* \* A mind capable of excelling in moral philosophy or in pure mathematics ought to succeed in law. \* \* \* I like law, because being of positive nature, it is—unlike morals and politics—*sure ground*. You feel a degree of certainty in reading the exposition of a topic. A mind confined exclusively to law is narrow, and not of a high order. Other and various learning is indispensable, as we gather clearness from seeing things in various relations. Coke and Bacon were universally learned. A *legal* mind fully content and satisfied with law rests on arbitrary collections of decrees. If I could not get any time from my law, for liberal and grateful studies, I'd give up all law from my present case. What wear upon me is not study but fatigue and responsibility of courts. My nervous attacks cease when I intermit courts."

—*Parker's Reminiscences*, 240 and 245.

It has been said that Choate could have written as good a history of Greece as Thirlwall or Grote.—*Author*.

Says E. P. Whipple: "As to his own method of learning the history of Greece, it may be affirmed that he studied the works of the Greek orators, philosophers, and historians in order to become mentally a citizen of Greece, and thus to look at Greek life through a Greek's eyes. By his realizing imagination, he instantly nullified the hard conditions of time; sent his mind and heart back 2,000 or 2,500 years to contemplate a civilization entirely different from ours; and often, while he was striding around Boston Common in the age of Buchanan, he was really making himself a contemporary of Pericles. His imagination was in ancient Athens, while his body was in what is ironically called 'the modern Athens'."—*E. P. Whipple's 'Recollections of Eminent Men,'* 59-60.

When the late Jas. T. Fields was collecting and editing Thos. De Quincey's Works he showed Choate an article which had appeared in some magazine with no external evidence as to the author. Mr. Choate said it was written by De Quincey. Mr. Fields wrote De Quincey, who answered that he had not written the papers, and never thought of the subject matter of it. With some exultation, Mr. Fields showed that letter to Mr. Choate, who said, "Never you mind; let me have the article again, and I will go over it more carefully!" He did so, and the next day wrote, "De Quincey did write it, De Quincey to the contrary, notwithstanding." After a time, De Quincey sent Mr. Fields the original manuscript of the article with a letter, stating that he had found it among old papers; and it was the work of his pen, he must confess the authorship, though all recollection of it had passed away.

—*Neilson's Memoirs of Choate*, p. 66.



When Judge Wild was told that Worcester had gotten out a new dictionary, with 10,000 new words in it, the Judge exclaimed: "Mercy on us! I hope Choate won't get hold of it." (Prof. Kellogg figured out his vocabulary contained 11,693 words.)

#### JAMES K. POLK

"We will return James K. Polk to the Convention that discovered him!"  
—*Rufus Choate—To the Boston Whigs, during the Polk campaign.*

#### INTERPRET THE LIBRETTO

"Interpret to me this libretto, lest I dilate with the wrong emotion."  
—*Rufus Choate—to his daughter at an Italian opera.*

#### A PRECEDENT

"I will look, your honors, for a precedent, although it would be a pity that the Court should lose the honor of being the first to establish so just a rule."—*To a Court who wanted a precedent, for Choate's position.*

#### "AMICUS CURIAE"

"I know that my time is exhausted, but as *Amicus Curiae* (a friend of the court) I should like to make a few suggestions to your Honors."  
—*Choate to a Court, who told him his time was up.*

#### HIS BOOKS

"If I were to go to Newport for pleasure without my books, I should hang myself before evening."  
—*Choate to a friend who taunted him for taking a trunkful of books to the seaside resort.*

#### WHEN BEATEN IN U. S. SUPREME COURT

"The Court has lost its little wits. Please let me have (1) our brief, for the law; (2) the defendant's brief, for the sophistry; (3) the opinion for the foolishness; and never say die."  
—*Choate to his associate counsel, when they had been beaten in Court.*

#### HAY-SEED JURY

"Oh, the law on our side is strong as thunder, but (with a slight shrug of his shoulders) what those bovine and bucolical gentlemen from Berkshire may say, God only knows."  
—*Choate to an anxious client, just before the trial.*

#### SUMNER'S "GRANDEUR OF NATIONS"

"Must I give up Thermopylæ and Marathon and Sempach, and Waterloo! Come, Lieber, to my den; don't bother Sumner any more. I have something to discuss with you; and we will fight it out, yard-arm to yard-arm, to our heart's content. Our dear Charles will be sufficiently punished for his heresies on military glory by less redoubtable antagonists than you. Come along, I say!"  
—*Choate to Francis Lieber who, the morning after Sumner's 4th of July oration, on the "True Grandeur of Nations," was assailing the orator for his extreme views of the policy and duty of peace.*



## BRING ON THE NEXT

"I sometimes feel, when a case has gone against me, like the Baptist minister who was baptising in winter a crowd of converts through a large hole in the ice. One brother—Jones, I think—disappeared after immersion and did not reappear; probably drifted ten or fifteen feet from the hole, and was vainly gasping under ice as many inches thick. After pausing a few minutes, the minister said: 'Brother Jones has evidently gone to kingdom come; bring on the next.' Now, I am not unfeeling, but after all has been done for a client that I can do—and I never spare myself in advancing his legal rights—the only thing left for me is to dismiss the case from my mind, and to say with my Baptist brother, 'Bring on the next'."

—Choate to a legal friend, who asked him, if he didn't worry over losing cases.

## CONSTITUTION AND BY-LAWS

"Good heavens, my dear fellow! my *constitution* was all gone years ago, and I'm living on the by-laws."

—Choate to a friend who told him he was ruining his 'constitution' by not taking enough exercise.

## A SUGGESTIVE DICTION

"You don't want a diction gathered from the newspapers, caught from the air, common and unsuggestive; but you want one whose every word is full-freighted with suggestion, with beauty and power."

—Choate on *Choice of Words*.

## THE LAWYER'S VACATION

"I'm going to write a book. I've got as far as the title page and a motto. The subject is, 'The Lawyer's Vacation,' and the motto, I have forgotten. But I shall show that the lawyer's vacation is the space between the question put to a witness and his answer."

—Choate on the leisure of a busy lawyer.

## NATURE

"Nature herself will have no great things hastily formed; in the direct path to all beautiful and conspicuous achievements she heaps up difficulty; to the largest animal she appoints the longest sleep in the parent womb."

—Choate's *Journal of Readings and Actions*.

## CARRY THE JURY

"Carry the jury at all hazards; move heaven and earth to carry the jury, and then fight it out with the judges on the law questions as best you can."—Choate on the trial of a case.

## WOMAN'S FROWN

"Woman's frown can disappoint the proudest aim."

## FAITH IN HIMSELF

"If I live, all blockheads which are shaken at certain mental peculiarities shall know and feel a reasoner, a lawyer, and a man of business."

—Choate's *Journal of Readings and Actions*, 1844



## THE STATE

"The grandest of the works of man, grander than the pyramids, or Iliads, or systems of the stars, is the State."—*Choate*.

## WOMAN

"With our sisters of the Republic, less or more, we would live and we would die, 'one hope, one lot, one life, one glory'."—*Choate*.

## A PARTY

"We join ourselves to no party that does not carry the flag and keep step to the music of the Union."—*Choate's letter to Whig Convention*.

## CLIENT—A LIAR

"What a liar our client is," said Benj. F. Butler, junior counsel with Choate,—the latter looking at Butler, with melancholy eyes, replied, "I would not say that, Mr. Butler; call him an inventor rather."

—*H. C. Lodge's "Early Memories," 52.*

## NEUTRALITY

"Neutrality in any sharp civil dissension is cowardly, immoral and disreputable."—*Rufus Choate*.

## THE BIBLE

"I would have it read not only for its authoritative revelations and its commands and exactions, obligatory, today and forever, but for its English, for its literature, for its pathos, for its dim imagery, its sayings of consolation and wisdom and universal truth. Especially must one study it daily, and cultivate a love for its words and style. He thus may become a good English scholar. As Macaulay truly says,—'A person who professes to be a critic in the delicacies of the English language ought to have the Bible at his fingers' ends'."

—*'Neilson's Memories of Choate', 91 and 214.*

## CROSS-EXAMINATION

Choate said to a witness,—*"Well, what did he say? Tell us how and what he spoke to you."* "Why," said the witness, "he told us there was a lawyer in Boston, named Choate, and he'd get us off if they caught us *with the money in our boots.*"

## HOW AND WHAT WALTER SCOTT WROTE

"Scott selects, first, the country in which he will lay the scenes of his action—Scotland, perhaps, or merry England, or the beautiful France. He marks off the portion of that country within which the leading incidents shall be transacted, as a conjurer draws the charmed circle with his wand on the floor of the Cave of Magic. Then he studies the topography of the region—its scenery, its giant mountains, its lakes, glens, forests, falls of water—as minutely as Malte Brun or Humbolt; but choosing out with a poet's recollections, the grand, picturesque, and graceful points of the whole transcendent landscape. Then he goes on to collect and treasure up the artificial, civil, historical features of the country. He explore its antiquities, becomes minutely familiar with every city and



castle and cathedral which still stands, and with the grander ruins of all which have fallen.—familiar with every relic and trace of man and art,—down even to the broken cistern which the Catholic charity of a former age had hewn out by the wayside for the pilgrim to drink in. He gathers up all the traditions and legendary history of the place,—every story of ‘hopeless love, or glory won,’—with the time, the spot, the circumstances, as particularly and as fondly as if he had lived there a thousand years. He selects *the age* to which his narrative shall refer,—perhaps that of Richard or Elizabeth, or Charles the Second, or the rebellion of 1745; and forthwith engages in a deep and discursive study of its politics; the state of parties, the character and singularities of the reigning king and his court, and of the prominent personages of the day;—its religious conditions, the wars, revolts, revolutions, and great popular movements; all the predominant objects of interest and excitement, and all which made up the public and out-of-door life and history of that particular generation. He goes deeper still;—the state of society; the manners, customs, and employments of the people; their dress, their arms, and armor; their amusements; their entire indoor and domestic life; the rank and accomplishments of the sexes respectively; their relations to each other; the extent of their popular and higher education; their opinions, superstitions, morals, jurisprudence and police,—all these he investigates as earnestly as if he were nothing but an antiquarian, but with the liberal, enlightened, and tolerant curiosity of a scholar, philosopher, philanthropist, who holds that man is not only the most proper but most delightful study of man. Thus thoroughly furnished, he chooses an affecting incident, real or imaginary, for the ground-work, and rears upon it a composition—which the mere novel reader will admire for its elegant style, dazzling poetry, and elaborate art; the student of human nature for its keen and shrewd views of man—‘for each change of many-colored life he draws’ the student of history for its penetrating development and its splendid, exact, and comprehensive illustration of the spirit of one of the marked ages of the world. And this is a Waverley Novel!”

Lecture ‘The Importance of Illustrating New England History by a Series of Romances, like the Waverley Novels. Delivered at Salem, Mass., 1833; 1 Samuel Gilman Brown’s Works of Rufus Choate, 321-3.

—*Author.*

RUFUS CHOATE: “Whoever tried to break the chain of his logical, graceful imagery was sure to find links of steel beneath the garland of flowers.”—*Anon.*



SIR EDWARD CLARKE (1841- ), England

A RETROSPECTION—SIR EDWARD CLARKE

"During all my years of absorbing professional work, years spent in learning and forgetting the details of the quarrels of others, or of the perpetual conflict between law and crime, there had often come to my mind the pathetic opening lines of one of Trench's finest sonnets:—

"To leave many lands unvisited,  
To leave so many glorious books unread.'

I had tried to use to the full my opportunities of travel, and I had often hoped that 'in those may-be years I had to live, some short space of quiet time might be granted me to turn back to those pleasures of literature which had been the delight of my boyhood. The famous passage in which Nicolo Machiavelli, in the year when his political employments ceased, described in a letter to his friend the joys of a library often haunted my thoughts.

"But when evening falls I put off my country habit filthy with mud and mire, and array myself in royal court garments. Thus worthily attired I make my entrance into the ancient courts of the men of old, where they receive me with love, and where I feed upon the food which only is my own, not for which I was born. They, moved by their humanity, make answer:— 'for four hours' space I feel no vexation. Poverty cannot frighten, nor death appall me.'

"My library is richer than that of the famous Florentine, for he had only the literature of Italy, in its ancient or its modern tongue, while I, subject to limitations of language, have all the wealth of the four centuries which have passed since he wrote those words. Those limitations are, indeed, sometimes irksome, when I think of the fortunate ones to whom the circumstances of their youth have given the opportunity of learning to enjoy in their original beauty the masterpieces of the great writers of classic times. But I do not think of them with any soreness of envy. Aeschylus, Plato, and Virgil are not for me. But I have Shakespeare, and Bacon, and Milton, and all their troop of worthy successors, and I feel no need of more. Others may feed in a wider pasture, but they have no better food. And here I have passed from the labor of life to its time of refreshment. I am sitting in my library—I planned the house, so of course it is the largest room—surrounded by my books. On the top of the low book shelves stand a few choice bronzes, Voltaire and Rousseau among them, and some fine specimens of my favorite Martin-ware. On the walls are some proofs of Landseer and Rosa Bonheur and the likenesses of Pitt and Fox, and Canning, and Wellington, and Peel.

"Chief treasures of all are Biscombe Gardner's portraits of my great master in politics (Disraeli), as he stood in the House of Lords in 1878 and spoke of the Berlin Treaty; and his favorite clock which now stands upon my mantel-shelf.

"I look from the windows over the green turf of the church grounds, and across the silver stream, and through the thinning autumn leaves see the low outline of the Surrey hills. There could be no sweeter surroundings, and I turn back to my desk in full contentment to write the closing pages of this book."—*The Story of My Life* 410-12.

PEN-PICTURES OF CONTEMPORARIES OF SIR EDWARD CLARKE, BALLENTINE AND GIFFARD—HIS IDEALS

"It was by watching the methods and studying the causes of the success of the two greatest leaders of the Criminal Bar—Sergeant William



Ballentine and Hardinge Giffard—that I trained myself for the work of later years. Ballentine, rather over middle height, lean and hard, with the eye of a hawk; a voice capable of many tones, but with a curious drawl, half infirmity and half affectation. A man of slight legal knowledge, of idle and pleasure-loving habits, but an advocate of quite extraordinary skill. He could rise to great eloquence, but his great power was in his cross-examination, which was the most subtle and deadly that I ever heard. There was a great fascination about him; whenever he was in court he was the most conspicuous person there, and seemed by instinct to lead or coerce or dominate judge and witness and jury. His temper was violent, his humor bitter and sarcastic, but he was the most generous of leaders. Once at Kingston, before Sir Alexander Cockburn, in a S. E. Ry. case, which he had not read, I was rather importunate in my suggestions, and he turned on me in Court, with ‘Damn you, sir, am I conducting this case or are you?’ But before the trial was over he explained to the jury that I had been right, and had only been reminding him of facts which he ought to have known.

“Hardinge Giffard was short of stature, not distinguished in appearance or manner, with a voice which though loud and clear was somewhat harsh and had no persuasive tones in it. Giffard was by his industry (I am speaking of his early years in silk); by his great knowledge of law, his strong masculine sense, his indomitable courage, and his excellence in the art of arranging and narrating facts, one of the most formidable of advocates. His scrupulous and absolute fairness gave him great influence with juries, and his reply in a criminal case was always worthy of study and imitation. Closely associated with him as I was for many years, I have not seen much of him in private life since he became Lord Chancellor, but it has been pleasant to see my old friend and companion develop into the greatest judge before whom I ever practiced.”

—‘*The Story of My Life*’.—81-2.

### SIR HENRY JAMES

“Sir Henry James, Attorney-General, in 1882, was a man of great ability and of high character, and did honor to himself and his profession, when four years later, he refused its greatest prize, the Lord Chancellorship of England, rather than assist in setting up a Home Rule Government in Ireland. As an advocate he was skilful, but not very courageous, for fear of losing a case, often settled it, when with a little more energy and persistence he might have won. But his handsome person, and genial manners, suave and dignified eloquence, made him a personal favorite in the Courts and in the House of Commons.—*Life* 206.

### LORD RANDOLPH CHURCHILL

“Lord Randolph Churchill’s temper was fickle as April and stormy as October. It is truly said in Winston Churchill’s brilliant life of his father, one of the best political biographies in our language, that—‘No one could tell what he would do, or by what motive, lofty or trivial, of conviction, or caprice, of irritation or self-sacrifice he would be governed’.”—*Life*, 214.

### CHARLES DILKE

“In 1885, Sir Charles Dilke showed only a few months before the wreck of his political career, qualities and capacities which promised to make him one of the foremost English statesmen of his time. His extraordinary industry; the fullness and exactness of his knowledge, his perfect tact and temper in dealing with questions every one of which had a special and peculiar importance to some member or group of members



in the House; the air of impartiality with which he did everything that was possible to give an advantage to his own side,—these deserved to be remembered with gratitude by those who were his colleagues.”—*Life* 313.

### IN THE VAN OF CIVILIZATION

“We claim that we are in the very van of the civilization of mankind. Our ships are on every sea; our traders are in every market our English tongue is fast becoming the language of the world. On every distant continent there are growing up colonies sprung from our loins and carrying forward our traditions of freedom and of order. Let us rise to our great mission. Let us show that we are capable of a calm and patient and manly spirit in dealing with international affairs—prompt to resent insult, steadfast in the protection of our countrymen under whatever government they live; but at the same time having the manliness to acknowledge mistakes which we ourselves have made, to make allowance for the ignorance, for the prejudice, for the suspicions of others—and to remember that it is easier and nobler for the strong to be generous than it is for the weak to be submissive. So shall we show to the world the policy and pattern of a Christian State, so shall we give the world the blessings of peace, and give, too, to the dear country of our birth the greatest of all honor it can have.”

—*In Public Speech, 1890 and 1900. Life, 146 and 352.*

### HOW TO PERPETUATE AN ADVOCATE'S CAREER

“There is one way in which an advocate may seek to secure some longer recollection of his work. Oratory has a literature of its own. The delightful and sadly neglected art of rhetoric finds its best illustration in forensic speech, and if an advocate addresses himself to his work, not only to the practical end of securing a verdict, but with the desire that his speeches shall have some literary quality, there is a possibility that they may be remembered later.”

—*‘Farewell to the Bar’; Life, 416-17*

### CLARKE'S AIM—POLITICAL

“I did not come to the Bar from any attraction for the study of law, but I came to the Bar because I believed that through this profession and through this alone, I might be able to make my way to political influence and position.”—*Life, 412.*

### EXCUSES

“A man who is good at excuses is never good at anything else.” This maxim was so impressed upon the youthful Clarke, by an employer,—Charles Davis, while in the latter's employ at eighteen, that the lawyer adopted it as a maxim.—*Life, 50.*

Sir Edward Clark having laid up at the age of 20, \$2165, then began the study of law, got the Tancard studentship, for six years, by competitive examination, which paid him \$475 annually; then a job reviewing books on the Morning Herald & Standard, at \$10 a week, writing 4 columns a week, during 3 years,—making \$2080 a year, and attended Chancery Court, hearing Cairns, Palmer, Mellish, and Rolt; took up the study of rhetoric—“An art,” he said, “so valuable, so essential to the advocate who wishes to be something more than a desultory prattler”; was admitted to the Bar at 23; said he determined to be a great speaker, and therefore studied Whately, Aristotle, Quintilian and Cicero (the classic authors in translation) were his teachers, and Erskine, Plunket, etc., of the moderns; his income in law the first year



was \$500, the second \$1000, third, \$1200; and from 1868 to 1907—40 years, his income averaged \$50,000 a year; in 1886 he bought a home—named by him, “Thorncote,” on the Thames river, with 8 acres of land, for \$32,000 (the cost of the house alone, 20 years before); built and furnished a church near his home which cost him \$62,500.

### CROSS-EXAMINATION

“It is a very useful general rule that you should not cross-examine when you cannot contradict. By provoking a repetition of the story you fix it on the minds of the jury, and you run the risk of the mention of some fresh detail which may be a strong, perhaps conclusive evidence of its truth.”—*Life*, 144.

### THE GREAT MASTERS OF DEBATE

“In my time, the great masters of debate were Disraeli, Gladstone, Balfour, and Asquith.”—*Life*, 212.

### LIVE WITHIN YOUR INCOME

“The best way to realize the pleasure of feeling rich is to live in a smaller house than your means would entitle you to have.”—*Life*, 94.

### FIRST DUTY OF A STATESMAN

“I trust our leaders will recognize that when we are anxious to extend the area of our trade and gain for ourselves imperial renown, we must never forget that the first duty of a statesman is to the poorest of the people, and that to every statesman worthy of the name the welfare of the people is the highest law.”—*Life*, 385,—*In House of Commons*, 1906.

### MORLEY'S HISTORY OF ENGLISH LITERATURE

“Henry Morley's ‘History of English Literature’ is by far the best of its kind in our language.”—*Clarke's opinion*,—*Life*, 51.

### AUTHOR OF IMPORTANT LAW

Clarke was instrumental in getting a law passed by Parliament to remove the rule which prevented a person charged with crime from giving evidence on his own behalf, and which would not permit his wife to be called as a witness. It took 28 years to carry such a law through. It was adopted in 1898.—*Life*, 339.

### REFUSED MASTERSHIP OF THE ROLLS

Clarke refused, at the hands of Lord Salisbury, in 1897, the Mastership of the Rolls, thinking it would deprive him of a brilliant Parliamentary career.—*Life*, 336.



## HENRY CLAY (1877-1852), Kentucky

### SCHOULERS' CHARACTERIZATION

"Though surpassed in the separate endowments, no American statesman and legislator has ever equaled Clay in the triple combination of eloquence, personal influence and creative power in legislation."

—*James Schouler*,—4 *U. S. History*, 471.

### A PLEA FOR THE UNION

"I am the candidate for no office. I never expect to be the candidate for any office the American people can give me, united or separated. If I can but appease the storm now raging in the Union, my ambition is gratified—gratified—gratified. I ask for no more—I desire no more than to see us once more, as a band of brothers, linked in a common fraternity. Let me do this, pass this bill—and I will retire with content to the lawns and groves of Ashland. I will there, among those I love, solace a heart *too* often wounded in public life—with the calmness and repose of domestic tranquility—and from my friends and my family, I shall meet that cordiality and *that* sympathy I now so ardently admire. They know me—they understand me. I appeal to my God and to them for the sincerity of my motives. *Yes, I have ambition*, but it is the ambition of being the humble instrument, in the hands of Providence, to reconcile a divided people—once more to revive concord and harmony in a distracted land. The pleasing ambition of contemplating the glorious spectacle of a free, united, prosperous, and practical people."

—*Henry Clay*,—*Bill to Modify the Tariff*.

### SECESSION UNCONSTITUTIONAL

"I have said that I thought there was no right on the part of one or more states to secede from the Union. I think so. The Constitution of the United States was made not merely for the generation that then existed, but for posterity—unlimited, undefined, endless, perpetual posterity. And every state that then came into the Union, and every state that has since come into the Union, came into it binding itself, by indissoluble bands to remain within the Union itself, and to remain within it by its posterity forever. Like another of the sacred connections, in private life, it is a marriage which no human authority can dissolve or divorce the parties from. And if I may be allowed to refer to some examples in private life, let me say to the North and to the South, what husband and wife say to each other: 'We have mutual faults; neither of us is perfect; nothing in the form of humanity is perfect; let us, then, be kind to each other—forbearing, forgiving each other's faults—and above all, let us live in happiness and peace together.' \* \* \* Dissolution of the Union and war are identical and inevitable. \* \* \* Look at all history, consult her pages, ancient or modern—look at human nature; look at the contest in which you would be engaged in the supposition of war following upon the dissolution of the Union, such as I have suggested; and I ask you if it is possible for you to doubt that the final disposition of the whole would be some despot treading down the liberties of the people—the final result would be the extinction of this last and glorious light which is leading all mankind, who are gazing upon it, in the hope and anxious expectation that the liberty which prevails here will sooner or later be diffused throughout the whole of the civilized world. Sir, can you lightly contemplate these consequences? Can you yield yourself to the tyranny of passion,



amid dangers which I have depicted in colors far too tame of what the result would be if that direful event to which I have referred should ever occur? Sir, I implore gentlemen, I adjure them whether from the South or the North, by all that they hold dear in this world—by all their love of liberty—by all their regard for posterity—by all their gratitude to Him who has bestowed on them such unnumbered and countless blessings—by all the duties which they owe mankind—and by all the duties which they owe themselves, to pause, solemnly to pause at the edge of the precipice, before the fearful and dangerous leap is taken into the yawning abyss below, from which none who ever take it shall return to safety.

“Finally, Mr. President, and in conclusion, I implore, as the best blessing which Heaven can bestow upon me, upon earth, that if the direful event of the dissolution of this Union is to happen, I shall not survive to behold the sad and heart-rending spectacle.”

—*Henry Clay, Senate Chamber, Feb. 6, 1850.*

Says Parton: “He had a power over a Kentucky jury such as no man has ever had: not a very able lawyer, but a brilliant, successful practitioner, and had amassed a competence after ten years at the bar.”

Webster said: “Clay probed nothing to the bottom. \* \* \* He was not a student, not a thinker, not a philosopher: never was a man of books, a hard student; but he displayed remarkable genius. He has been too fond of excitement—he has lived upon it; he has been too fond of company, not enough alone; and has few resources within himself. Now a man who cannot, to some extent, depend upon himself for happiness is to my mind one of the unfortunate.”

HENRY CLAY: “His periods glittered like polished lances in a sunny forest.”—*Anon.*

#### AN ORATOR AT 22

Clay was carried upon the shoulders of the populace because of his speech in Lexington, Ky., in opposition to the Alien & Sedition laws, when 22 years of age.—*Sergent's Life of Clay, 23.*

#### FAREWELL TO THE SENATE

When he made his “Farewell Speech to the Senate,” in 1842, there was not a dry eye in that body.—*Sergent's Life of Clay, 210.*

#### DEFENSE OF JEFFERSON AND INVECTIVE AGAINST JOSIAH QUINCY

“How vain and impotent is party rage directed against such a man (Jefferson). He is not more elevated by this lofty residence upon the summit of his own favorite mountain than he is lifted by the serenity of his mind, and the consciousness of a well-spent life above the indignant passions and feelings of the day. No! his own beloved Monticello is not less moved by the storms that beat against its sides than to this illustrious man by the howlings of the whole British pack let loose from the Essex kennel! When the gentleman, to whom I have been compelled to allude, shall have mingled his dust with that of his abused ancestors, when he shall have been consigned to oblivion, if he live at all, shall live only in the treasonable annals of a certain junto, the name of Jefferson will be hailed with gratitude, his memory honored and cherished as the second founder of the liberties of the people, and the period of his administration will be looked back to as one of the happiest and brightest epochs in American history. But, I beg the gentleman's pardon. He has, indeed, secured to himself a more imperishable fame than I had supposed. I think it was about four years ago that he submitted to the House of Representatives an initiative proposition for an impeachment of Mr. Jefferson.



The House condescended to consider it. The gentleman debated it with his usual temper, moderation, and urbanity. The House decided upon it in the most solemn manner; and, although the gentleman had somehow obtained a second, the final vote stood *one for and one hundred and seventeen against the proposition!* The same historical page that transmitted to posterity the virtue and glory of Henry the Great of France for their admiration and example has preserved the infamous name of the fanatic assassin of the excellent monarch. The same sacred pen that portrayed the sufferings and crucifixion of the Savior of mankind has recorded for universal execration the name of him who was guilty of betraying his God!"

When the proposition was made to impeach Thomas Jefferson, Mr. Clay arose and exclaimed: "Sir, the gentleman soils the spot he stands upon."—*In House of Representatives, 'Sergeant's Life,' 47.*

### INTENSELY AMERICAN

"Clay was intensely American. Few, if any, allusions are to be seen in his speeches or writings to ancient or modern literature, or to thoughts or ideas of other men. His country, its institutions, its policy, its interests, its destiny, form the exclusive topics of these eloquent harangues \* \* \* which mark the productions of the great American orator."

—*Chas. J. Franklin, of Va., in H. of R., 'Memorial Remarks,' Sergeant's Life, 410.*

### "I WOULD RATHER BE RIGHT THAN PRESIDENT"

Said by Clay to Wm. C. Preston, in 1832, when told that his speech for slavery and against the reception of abolition petitions might injure his own and the Whig party's prospects.—*Sergeant's Life, 148.*

### DUTY OF AMERICA TO GREECE

"Go home, if you dare, go home, if you can, to your constituents and tell them that you voted it down! Meet, if you dare, the appalling countenance of those who sent you here and tell them that you shrank from the declaration of your own sentiments; that, you cannot tell how, but some indefinite danger affrighted you; that the specters of cimatars, and crowns and crescents, gleamed before you; and that you suppressed all the noble feelings prompted by religion, by liberty, by natural independence, and by humanity! I cannot bring myself to believe that such will be the feeling of a majority of this House."

### THE MAN AND HIS ORATORY

"Clay was a man of large natural ability, but he lacked the training of a systematic education. He learned early to appreciate his heaven-born endowments, and to rely upon them for success in his chosen career. Of sanguine temperament, quick perception, irresistible energy, and enthusiastic disposition, he was well fitted to be a party advocate, and was the greatest parliamentary leader in our history. He was, however, inclined to 'crack the whip' over those of his supporters who exhibited a desire to hang back and question whither his impetuous lead would tend. He knew men well, but he had no knowledge of books. The gaming-table had for him allurements that he could not find in the library. According to the manners of his time, he drank to excess. His warm heart made him a multitude of friends; his impulsive action and positive bearing raised up enemies; yet at his death he left not an enemy



behind him. He was withal a man of inflexible integrity. Straightened in pecuniary circumstances during a large part of his Congressional career, he nevertheless held himself aloof from all corruption.

"Other Americans have been intellectually greater, others have been more painstaking, others still have been greater benefactors to their country; yet no man has been loved as the people of the United States loved Henry Clay. \* \* \* He was a persuasive speaker, his magnetism was great; the impressioned utterance and the action suited to the word aroused the enthusiasm of the moment, and carried everything resistlessly before him, whether he addressed the tumultuous mass-meeting, or his cultured audience of the Senate. Yet he can hardly be ranked as among the half dozen great orators of the world. It is true his speeches in print convey no idea of the effect of their delivery, and in the reading, one loses the whole force of his fine physical presence, and fails to appreciate the strength derived from his supremely nervous temperament."—*Jas. Ford Rhodes' History of the U. S., Vol. 1, 120-29.*

### CARL SCHURZ'S ESTIMATE OF CLAY

"Webster excelled him in breadth of knowledge, in keenness of reasoning, in weight of argument, and in purity of diction. Webster would instruct, and convince, and elevate, but Clay would overcome his audience. Clay was greatly the superior of Webster, as well as of all other contemporaries, excepting Andrew Jackson, with elements which make a man a leader. \* \* \* Clay was a strong leader, but not a safe guide. His impulses were vehement, and his mind not well fitted for patient investigation. His imagination frequently ran away with his understanding. Disliked advice which differed from his preconceived opinions. Was in no sense a money-maker in politics. His integrity as a public man remained without blemish throughout his nearly fifty years of public service. \* \* \* He said: 'If any one desires to know the leading and paramount object of my public life, the preservation of the Union will furnish him the key. \* \* He occupied the chair of Speaker of the House of Representatives for fourteen years, with short intervals, and not one of his decisions was ever reversed; and he stands in the traditions of the House as the greatest of its Speakers. \* \* John Q. Adams offered Clay a position upon the Supreme Bench of the U. S., which the latter declined, and the former said of him that he shed unfading honor upon the Department of State by the manner in which he discharged its duties.'"

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### EVERY MAN MUST HAVE DEFENSE

"I have heard it observed by a very learned man that even God himself did not pass sentence upon Adam before he was called upon to make his defense. 'Adam', says God, 'where art thou?' 'Hast thou not eaten of the tree whereof I commanded thee that thou shouldst not eat?' And the same question was put to Eve also."

—*Sir John Fortescue, Eng. (1394-1476), Lord Chief Justice of England, in the reign of Henry VI (1422-1471). Wrote, De Laudibus Legum. Angliae, upon which his fame rests, 1537.*



## JOHN M. CLAYTON (1796-1856), Delaware

### AN INDESTRUCTIBLE UNION

"If there be any one sentiment in my bosom more deeply seated and more deeply cherished than all others, it is that of love and veneration for the institutions which our fathers have left us, and for the country, the whole country, covered and protected by the American Constitution. There will be no help for me or mine when this Union shall be broken up; and should that melancholy period ever arrive, I shall be a wanderer without a home. I can take no part for one section against the other; to me the preservation of the Union is a matter of interest above all others, and if necessary I shall be true to those who sustain it to the last of my blood and breath."

Author of the Clayton-Bulwer Treaty of 1850, of whom John Quincy Adams said of his speech on the public land question in 1830: "Taken altogether, it was one of the most powerful and eloquent orations ever delivered in either of the Halls of Congress."

—*Memoirs of Adams, Vol. 8, p. 213.*

### REFUTES NULLIFICATION

"The honorable Senator from South Carolina (Mr. Calhoun) has told us that all human institutions like those which formed them, contain within themselves the elements of their own destruction, and that our government is now exhibiting their operation. To this general philosophic remark I should not have objected but for its application. All the works of man are destined to decay; but while the American people shall remain true to themselves, their government cannot be destroyed, for it contains within itself endless, and ever renascent energies which must bring it out in triumph, and with Antaeus vigor in despite of every effort to overthrow it. From foreign force it has nothing to fear; it dreads nothing now from any section of this Union which shall seek to prevent by foreign intervention the just operation of our laws. Yes sir, foreign alliance sought by any member of this confederacy for the purpose of making war on us, would be the means under Heaven of immediately rallying every patriot of every political party under the broad banner of the Republic.

"Popular virtue is the only safe basis of popular government. This is the 'fountain from which our current runs or bears no life;' and I concede that the moral blow to the liberties of this country may at last be struck by the hand of one who has been indebted to it for existence. The shaft which shall stretch the American Eagle, bleeding and lifeless in the dust, must be feathered from his own bright pinions, and bitter will be the hand of him who shall loose that fatal arrow from the string.

"Remember him the villain, righteous Heaven, in thy great day of vengeance! Blast the traitor, and his pernicious counsels, who, for wealth, for powers, the pride of greatness or revenge, would plunge his native land in civil war'."

—*John M. Clayton's Reply to Senator John Tyler of Virginia on 'Nullification', 1833.*

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### LAW—Lord Clarendon

"The law is the standard and guardian of our liberty; it circumscribes and defends it; but to imagine liberty without law, is to imagine every man with his sword in his hand to destroy him who is weaker than himself."



## HENRY L. CLINTON, New York

### ARRAIGNMENT OF SIMMS

"What a picture of woe! The family altar in ruins! The *seducer* has wrapped the domestic temple in the flames of everlasting infamy! Simms, not content with having done his worst to destroy the soul of his victim, has assassinated her memory! He not only plucked from the diadem of her pure character the priceless jewel, virtue, but now that she is dead, and her mother is in eternity, a mother who, if living, with God's truth would brand on his forehead, in letters of glowing fire, the words, 'Liar, Defiler of the Ashes of the Dead!' yes, now that the voice alike of mother and daughter is hushed in the cold and silent grave, he revels in the fond recollection of the triumphs of his lechery, and, in effect, proclaims his victim a willing wanton."

—*Henry L. Clinton, in Defense of Dr. E. M. Brown of N. Y. for the Murder of Miss Clementina Anderson, the 20 yr. old daughter of Jas. Anderson. Mr. Clinton contended that Simms, 26 yrs. of age, who had been a suitor of two years, was the murderer. Brown was convicted of manslaughter.*

Says Henry L. Clinton: "Mr. Graham was a profound and thoroughly read lawyer. He was especially skillful and discreet in the conduct of trials. He wrote when a student of law 'Graham's Practice,' which he sold to Gould, Banks & Co. for \$500, upon which they netted \$30,000."

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### BOLINGBROKE ON LAWYERS

"I might instance in other professions the obligations men lie under of applying to certain parts of history; and I can hardly forbear doing it in that of the law, in its nature the noblest and most beneficial to mankind, in its abuse and debasement the most pernicious. A lawyer now is nothing more (I speak of ninety-nine in a hundred at least), to use some of Tully's words, '*Nisi laegulius quidam cautus, et acutus praeco actionum cantor formularum, auceps syllabarum.*' But there have been lawyers that were orators, philosophers, historians. There have been Bacons and Clarendons. There will be none such any more till, in some better age, true ambition or the love of fame prevails over avarice, and till men find leisure and encouragement to prepare themselves for the exercise of this profession by climbing up to the vantage ground—so my Lord Bacon calls it—of science, instead of grovelling all their lives below in a mean but gainful application to all the little arts of chicanery. Till this happens, the profession of the law will scarce deserve to be ranked among the learned professions; and whenever it happens, *one of the vantage grounds to which men must climb is metaphysical, and the other historical, knowledge.* They must pry into the secret recesses of the human heart and become well acquainted with the whole moral world, that they may discover the abstract reason of all laws; and they must trace the laws of particular states, especially of their own, from the first rough sketches to the more perfect draughts, from the first causes or occasions that produced them, through all the effects, good and bad, that they produced."

—*From the 'Study of History.'*

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### LAW—Sir Matthew Hale

"All before Richard I. is before time of memory; and what is since is, in a legal sense, within the time of memory."



BOURKE COCKRAN (1854- ), New York

### ANTAGONISM MAKES ORATOR

"I believe a man, to make a great speech, should be antagonized, stung, as it were, to effort. Ordinary speech-making is vapid and leads to nothing. At any rate it bores me. To talk for the sake of talking, just to make mere pleasantries, that is not oratory."

—*Bourke Cockran, at Tammany Hall, New York City, 1892.*

### CONFIDENCE AND COMMERCE

"Confidence is to Commerce what the atmosphere is to the human body. Impair the one and trade is paralyzed; curb the other and human existence is ended."

—*From speech at Auditorium, Chicago, Ill., Sep. 12, 1896.*

### OUR REPUBLIC

"We will never concede that this republic of ours is anything but a glorious beacon kindled by patriot hands in the western sky to show the sons of men everywhere the pathway to liberty, to order and prosperity. We will never concede as the populists pretend, that it is but a beacon kindled by the hands of cupidity upon the rocks of destruction, disorder and dishonor. We will never believe that the record of the American republic obscures the horizon of hope to the children of men. We will never concede that those stars in that flag are tear drops, rained from the eye of human despair. We will always insist that like the stars of heaven, they are glittering proofs of God's abundant, overflowing mercy to men. We believe that as long as civilization lasts this will continue to lead mankind in the pathway of honest dealing and wise legislation. We believe that wherever in the future men may talk of the country that is greatest of the people that are grandest, of the nation that is most prosperous, of the men that are the bravest, and of the women that are the purest, we will know that ours is the country of which they speak, we will know 'My Country 'tis of Thee, Sweet Land of Liberty.' "—*From same Speech, Chicago, Sep. 12, 1896.*

### VICE AND FOLLY

"I have always felt that there is nothing original, either in vice or folly."

In speaking of Bryan's assertion that the American people do not want to be dominated by the money power of England, which tried a debased currency, clipped money, before 1696, until she called in all inferior money by giving full weight for debased money, at the suggestion of her committee to remedy the difficulty, under the advice of Sir Isaac Newton and John Locke.—*From Chicago Speech, Sep. 12, 1896.*

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### LAW—Hooker

"Of law there can be no less acknowledged than that her seat is the bosom of God, her voice the harmony of the world. All things in heaven and earth do her homage,—the very least as feeling her care.



## ALEXANDER COCKBURN (1802-1880), England

### DEFENDING A BAD CAUSE

“Much as I admire the great ability of Monsieur Berryer, to my mind his crowning virtue, as it ought to be of every advocate, as he has throughout his career conducted his cases with untarnished honor. The arms which an advocate wields he ought to use as a warrior, and not as an assassin. He ought to uphold the interests of his clients *per fas*; and not *per nefas*. He ought to know how to reconcile the interests of his clients with the eternal principles of truth and justice.”

### BULL-DOZING CROSS-EXAMINATIONS

“I deeply deplore that members of the Bar so frequently unnecessarily put questions affecting the private life of witnesses, which are only justifiable when they challenge the credibility of witnesses. I have watched closely the administration of justice in France, Germany, Holland, Belgium, Italy, and a little in Spain, as well as in the United States, in Canada, and in Ireland, and in no place have I seen witnesses so badgered, browbeaten, and in every way so brutally maltreated as in England. The way in which we treat our witnesses is a national disgrace and a serious obstacle, instead of aiding the ends of justice. In England, the most honorable and conscientious men loathe the witness-box. Men and women of all ranks shrink from subjecting themselves to the wanton insult and bullying misnamed cross-examination in our English courts. Watch the tremor that passes the frames of many persons as they enter the witness-box. I remember to have seen so distinguished a man as the late Sir Benjamin Brodie shiver as he entered the witness-box. I dare say his apprehension amounted to exquisite torture. Witnesses are just as necessary for the administration of justice as judges and juries and are entitled to be treated with the same consideration, and their affairs and private lives ought to be held as sacred from the gaze of the public as those of the judges and the jurymen. I venture to think that it is the duty of the judge to allow no questions to be put to a witness unless such as are clearly pertinent to the issue before the Court, except where the credibility of the witness is deliberately challenged by counsel and that the credibility of a witness should not be wantonly challenged on slight grounds.”—*From the Irish Law Times, 1874.*

Cockburn studied at Cambridge, Eng., was called to the bar in 1829, soon became distinguished as a pleader before parliamentary committees. In 1847 he became member of parliament from Southampton, in the Liberal interest, became Solicitor-General and was knighted, 1850; was made chief justice of the common pleas, 1856; Lord Chief Justice, 1859. He was prosecutor in the Palmer case; and among the many famous trials over which he presided were the Wainwright and Tichborne cases; represented Britain in the Alabama case.—*Author.*

### THE PALMER PROSECUTION

“In 1856, William Palmer, nominally a surgeon, but really a racing and betting blackleg, of Staffordshire was brought to trial in the Central Criminal Court for poisoning his friend and patient, John Parsons Cook, with strychnia. That deadly alkaloid was then practically unknown in England, and the medical profession sharply divided both as to the symptoms which accompany, and the appearances which follow, its adminis-



tration. Cockburn was attorney-general, and therefore responsible for the prosecution. He spent the greater part of his time in studying the chemistry of strychnia in the laboratory of Dr. Swaine Taylor, whose treatise on Medical Jurisprudence is a standard in all countries. The prisoner was defended by Sergeant Shee, the foremost criminal lawyer of his day, and Mr. Grove, Q. C., an eminent man of science, and a Privy Councillor, in 1891, aided by an army of medical experts. A determined and most ingenious effort was made to show that tetanus produced by strychnia, traumatic tetanus, idiopathic, or constitutional tetanus, epilepsy, and general convulsions could not be distinguished with sufficient clearness to warrant the jury in finding a verdict against the prisoner; but Cockburn's victory was complete. His opening speech 'will live forever,' in legal literature; he completely destroyed in cross-examination the expert evidence of the defense, and secured the conviction of the prisoner. When the jury returned a verdict of 'guilty,' the convict threw over the dock-rail to his solicitor a scrap of paper on which he had written, in the language of the turf, 'the riding has done it.' "

—3 *Green Bag*, 280.

### LAWYER, LEGISLATOR, JUDGE

"Alexander Cockburn was one of the few who in our time have won fame alike at the bar, in the House of Commons, and on the bench. But he ought to have won fame also as a sayer of good things, and to win such fame he only needed a faithful chronicler."

—2 *Justin McCarthy's Reminiscences*, 196.

### A GREAT ADVOCATE AND A GREAT LAWYER

"At the bar Cockburn was merely a great advocate; but when he had ascended the bench, he soon made himself a great lawyer and a great judge. His magnificent gift of exposition, matured by practice, reached a far higher development in the great Matlock will case (1870) than even in the prosecution of Palmer. But it is not solely nor chiefly for these great judicial efforts that Lord Cockburn will be remembered. The modern law of newspaper libel is practically his creation, and no lawyer will ever speak without respect of the judge who pronounced the decision in *Banks v. Goodfellow*."—3 *Green Bag*, 131.

### A TYPICAL ENGLISHMAN

"Lord Cockburn was, in his faults and in his virtues, a typical Englishman. In his boisterous life, his intellectual strength, and his almost feudal chivalry he resembled one of our old Norman kings. \* \* \* Lord Cockburn was every inch an advocate; his forensic career had its own failures, of course, but these were relieved by triumphs which only genius of a high order could have accomplished. His reply in the Palmer case is superior to anything that can be found in the published speeches of Erskine; and his cross-examination for the defense of the same *cause celebre* could hardly be surpassed."—3 *Green Bag*, 130.

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### WIRT ON READING

"Get a habit, a passion for reading; not flying from book to book, with the squeamish caprice of a literary epicure; but read systematically, closely, thoughtfully, analyzing every subject as you go along, and laying it up carefully and safely in your memory. It is only by this mode that your information will be at the same time extensive, accurate, and useful."



## SIR EDWARD COKE (1549-1634), England

### THE SUBJECT SHOULD CONSENT TO TAX

"The lord may tax his villien (tenant), high or low; but it is against the franchises of the land for freemen to be taxed but by their consent in parliament."

### RESTRAINT IS IMPRISONMENT

"No restraint be it ever so little, but is imprisonment."

### SYLLABLES RULE WORLD

"Syllables govern the world."

### JOSTLING WITH THE LAW

"No subject, though ever so powerful or subtle, ever confronted or jostled with the law of England, but the same law in the end infallibly broke his neck."

### READING

"A cursory and tumultory reading doth ever make a confused memory, a troubled utterance, and an uncertain judgment."—*6th Report (Preface)*.

### COKE'S LAST WORDS

His last words: "Thy kingdom come. Thy will be done."

### THANKED GOD FOR THREE THINGS

"I thank God for three things: That I never gave my body to physic, my heart to cruelty, nor my hand to corruption; and I commend myself for three things: Obtaining so fair a fortune with my first wife, my successful study of the law, and the independent manner in which I obtained all my public employments, *nec prece, nec pretio*, without either prayers or pence."

### READING WITHOUT HEARING

"Reading without hearing is dark and irksome; hearing without reading is slippery and uncertain; neither of them yield seasonable fruit without conference."

### THE LAW IS LIKE A DEEP WELL

"Knowledge of the law is like a deep well, out of which each man draweth according to the strength of his understanding."

### BRITISH CONSTITUTION

"The wisdom of all the wise men in the world, if they had all met together, could not have equaled the British Constitution."

### LITTLETON'S TENURES

"The most perfect and absolute work that ever was written in any known science."



## THE FIRST LAW-GIVER

"Moses was the first Reporter."

"A man's house is his castle."—*3rd Institute*.

## HIS METHOD OF LEGAL STUDY

"Six hours in sleep, in law's grave study six,  
Four spent in prayer, the rest on nature fix."  
—*Translation of Lines, quoted by Coke*.

## FREEDOM OF TRADE

"Freedom of trade is the life of trade, and all monopolies and restrictions of trade do overthrow trade."—*Roscoe's Life of Coke, 29*.

## REASON AND LAW

"Reason is the life of the law; nay, the common law itself is nothing but reason. \* \* \* The law is the perfection of reason."—*1st Institute*.

## JURISPRUDENCE

"The gladsome light of jurisprudence."—*1st Institute*.

## CORPORATIONS

"They (corporations) cannot commit treason, nor be outlawed nor excommunicated, for they have no souls."  
—*Case of Sutton's Hospital, 10 Rep., 32*.

## MAGNA CHARTA

"Magna Charta is such a fellow that he will have no sovereign."  
—*Debate in the Commons, May 17, 1628*.

## CLEAN CLOTHES

"The cleanliness of a man's clothes ought to put him in mind of keeping all clean within."

## THE COMMON LAW

"If I am asked a question of common law, I should be ashamed if I could not immediately answer it, but if I am asked a question of statute law, I should be ashamed to answer it without referring to the statute book."

## WEALTHY

Coke was extremely avaricious, and left an enormous fortune; so great that it excited the alarm of the crown.

## HARD WORKER

"He was the most methodical and hard working man that ever lived; slept only six hours, and from three in the morning till nine he read or took notes of the cases tried in Westminster Hall, with as little interruption as possible."

—*This was during his student days.—British Biography, article, Coke, 120*.



## ABUSE OF RALEIGH

"Sir Edward Coke, a man of prodigious ability and acquirement, but still essentially commonplace in his intellect and prejudices, was once goaded by rage and hatred into an imagination in which his whole massive nature seemed to emit itself in a Titanic stutter of passion. We refer, of course, to his calling Sir Walter Raleigh a 'spider of hell'—an image in which loathing became executive, and palpably smit its object on the cheek. \* \* \* The image may be a small matter in itself, becomes tremendous when we see the whole roused might of Coke glare terribly through it."—*Whipple's 'Literature and Life,'* 241.

## COKE AND BACON COMPARED

"Sir Edward Coke and Francis Bacon were by far the most extraordinary men of their age. England had never before seen two such legal rivals in her courts, and time has not produced any two lawyers who can be compared to these great opponents in her Augustean age. Bacon had the greater genius, Coke the most industry and application; the first had a mind the most comprehensive and capable of the highest flights; the last had the greater power of application and of exclusive attention. The mind of the one was utterly incapable of producing the 'Novum Organum' as the other was to luxuriate among the dry immortal sections of the 'Commentaries of Littleton.' \* \* \*

"Bacon became the head of the Court of Equity, Coke held the highest common law office in the gift of the Crown. Both were charged with malversation in the administration of their official duties, one with unsoundness of his law, the other with the badness of his equity. The King removed his Chief Justice, the parliament disqualified the Chancellor. Both died in disgrace, though they had partially recovered the smiles of royalty. \* \* \* They were both great men, both had their weak points, and are both entitled to the grateful plaudits of posterity."—2 *Johnson's Life of Coke,* 70.

## SELDEN AND COKE COMPARED

"John Selden was the most learned of Sir Edward Coke's contemporaries; born when the latter was 34 years of age, though profoundly learned, never dwelt upon any subject, but he exhausted all the learning that could be brought to bear upon the question. Coke loved decision of character, and early action upon such decision. Both were mentally and personally industrious. Selden had a great love of ease, and sometimes indulged idleness and timidity at the expense of his character as a patriot."—2 *Johnson's Life of Coke,* 183-4.

## COKE ON LITTLETON'S TENURES

"It is the work of absolute perfection in its kind, and as free from errors as any book I have known to be written of any human learning."

—2 *Johnson's Life,* 456.

## COKE'S INSTITUTES

"This work is in 4 volumes, the first only being published during his life, when in his 82nd year. They are in four parts:

1st. Contained Comments upon 'Littleton's Tenures,' the various tenures, by which in common law, land is held;

2nd. Upon Magna Charta, Westminster 1, and other old statutes;

3rd. Criminal Causes, and Pleas of the Crown;

4th. The Jurisdiction of the Courts.

His 'Commentaries upon Littleton' is an immense repository of every-



thing that is most interesting or useful in the legal learning of ancient times. The 2nd, 3rd, and 4th, Institutes were published after his death."

—2 *Johnson's Life of Coke*, 444-58.

### HIS PERSONAL APPEARANCE

Coke, who is said to have weighed at birth 14 pounds, was prepossessing in appearance, of regular features and engaging expression, of vigorous and well-proportioned frame, grave and dignified air and manner, of temperate, laborious, and exact habits; neat in his dress, and studious of the cleanliness of his person. Retired at 9 o'clock, and rose at 3 in the morning. He was proud in the extreme, imperious and overbearing. This pride was one great actuating principle which followed him through life, was distinguished in his two marriages, in his pleadings, in his decisions as a judge, in his contests with Bacon, in his intrigues in court, in the marriages of his children, and even in his speeches in parliament.

### HIS DOMESTIC LIFE

Coke married when 31 Bridget Paston, 18 years of age, from whom he received, and at her father's death \$150,000. He lived very happily with her, whom he married in 1582, and by whom he had ten children. She died in 1598, when he married Elizabeth Hatton, the beautiful young daughter and wealthy widow of Sir William Hatton, the daughter of Thos. Cecil, first Earl of Exeter. He was then 48, and rising in his profession, and was the first law officer of the Crown. Was opposed by his illustrious rival Francis Bacon. She was very young, barely of age, and one of the court beauties,—gay proud, high-spirited and clever. Their tastes were dissimilar; she an admired courtier, delighting in festivals, plays, court masques, and every variety of revelry; he a grave, elderly lawyer, and gave, it appears, but few large entertainments, took no pleasure in festivities, studied hard and unceasingly, went to bed with the sun, and rose at 3 o'clock in the morning. Was busy in the courts, and she enjoying dissipation, and ashamed of her husband.

### HIS INCOME

During his attorney-generalship, Coke's income, including his official fees (which were but \$405) was about \$35,000 annually—a very large sum for those times.

### HAD POOR OPINION OF BACON

"Coke had a poor opinion of Bacon's knowledge of law, and an equally mean opinion of his philosophy, of which last branch of knowledge, however, he was totally unqualified to be a judge."

—*Johnson's Life of Coke*, 222.

### HELD BEN JONSON AND SHAKESPEARE IN CONTEMPT

He looked upon Jonson and Shakespeare as "vagrants," so much did he despise general literature.

### UNEQUALED IN INFORMATION

"As a lawyer Coke has, perhaps, never been equaled in the copious extent and variety of his information. As an antiquarian lawyer, he was not deeply learned, and was surpassed by Selden, and perhaps by Hale. Yet even with these defects he stood the acknowledged head of



his profession, at a period fruitful in eminent men, and when the ambition of Bacon led him to devote his high genius to the same pursuits."

—*Roscoe's 'Eminent Lawyers,' 40.*

### COKE'S REPORTS

"Coke's Reports, in 13 volumes, (1601-1658), of which 11 volumes were published during his life, constitute a mass of legal information to which no lawyer is a stranger. They comprehend an immense mass of decisions in which the ablest lawyers pleaded, the greatest judges presided, and which the greatest lawyer of his age reported, with an industry, unwearied, and unfailing accuracy. Many successors have excelled him in fluency of language, in elegance of expression, but none have rivalled him in the immense legal knowledge with which his reports abound. \* \* \* In more than two centuries which had intervened since Edward III had caused the publication of his official reports of cases argued and determined in the Courts at Westminster, few law reporters of any kind had appeared. The first reporters were men learned in the law, —the results of their labors are in 11 volumes—known as the Year Books, extending through nearly 2 centuries, beginning in the 1st year of Edward I, and concluded in the 12th year of Henry VIII."

—*2 Johnson's Life of Coke, 427-9.*

### COKE'S CONTEMPORARIES

Plowden Bacon (who graduated as did Coke at Cambridge, died \$110,000 in debt, Egerton (Lord Ellesmere), Cooke, Yelverton, Hobart, Tanfield, were great lawyers—the ablest Britain has produced. Shakespeare was fourteen years Coke's senior. Coke long outlived Beaumont and Fletcher, Spencer, of the 'Fairy Queen' fame, Camden Burleigh, Robert Cecil, and Ben Jonson survived him three years. Harvey, the discoverer of the circulation of the blood, was for sixty-five years his contemporary—*2 Johnson's Life of Coke, 434.*

### SIR FRANCES WINDEBANK STOLE HIS PAPERS

Sir Frances Windebank came to Coke's house at Stoke Pogis, when on his death bed, in his 83rd year, in virtue of an order from the Privy Council in search of certain seditious papers—at least this was the pretense. He seized in his search of these papers and carried away Coke's will, his Life of Judge Littleton, in his own hand writing, his Commentary on that judge's Book of Tenures, and upon Magna Charta, Pleas of the Crown, Jurisdiction of Courts, besides 51 other manuscripts. 70 years afterwards Roger Coke, his own son, upon motion, requested the King, working through the House of Commons, to restore these valuable papers to his family. His will was never recovered, but the remainder were in consequence of this address principally returned—*2 Johnson's Life, 320.*

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### RELIGION

LORD CHATHAM: "If you are not right toward God, you can never be so toward man; and that is forever true; whether wits and rakes allow it or not."—*To his nephew.*

D. WEBSTER: "Political and professional fame cannot last forever, but a conscience void of offense before God and man is an inheritance for eternity. Religion, therefore, is a necessity, an indispensable element.



## JOHN DUKE COLERIDGE (1821-1894), England

### AMERICAN WRITERS

"You know—forgive my vanity if I say I know, too—that you bred Benjamin Franklin, and Daniel Webster, and Joseph Story, and Theodore Parker: Daniel Webster, whose hand I was privileged as a boy at Eton to press, when he was in England as your representative, and whose eloquence I have humbly studied ever since; Story, a household word with every English lawyer; Parker, perhaps one of your highest and greatest souls. (Applause.) Hawthorne, if you will forgive me the expression of a foreigner, is, perhaps, taken altogether, almost your foremost man of letters (applause); Longfellow, the delight and darling of two hemispheres; Holmes, the Autocrat of the Breakfast Table (applause); the autocrat, if he can chose, of every dinner table, too—but there I am told he is content to play the part of a constitutional sovereign. Emerson, as broad and as strong as one of your rivers, and as pure; Lowell, I am proud to say, my own honest friend (applause), your representative at this moment in my own country. Like Garrick in Joshua Reynold's picture, he excels in either tragedy or comedy, and is delightful whether as Hosea Bigelow or as James Russell Lowell, skilled with equal genius to move the hearts of his hearers whether to smiles or tears. And Howells, the last of your American invaders who have taken England by storm. (Applause.) These are your glories, these are the men who make your history. These are the men, forgive me for saying, of whom you ought to be proud, if you are not heartily proud. (Applause.)

—*At a banquet, given by the City of Boston, at the Parker House, Sept. 8, 1883.*

### EXTINGUISHING A LIFE

"The life of the prisoner is in your hands, gentlemen." (Just then the lights went out.) "You can extinguish it as easily as that candle was extinguished but a moment ago; but it is not in your power to restore that life, once taken, as that light has been restored!"

—*Extract from speech in defence of a murderer.*

### DISTINGUISHED

No English judge has attained such distinction at once in letters, politics and law. "Nature," said an adverse critic, "intended him for a bishop, but accident made him a judge."

### IN FAVOR OF CODE PLEADING

"You have lately procured, may I say most wisely, a great national park, into which the bounties and glories of nature, and strange and eccentric forms which natural objects sometimes assume, may be preserved forever for the instruction and delight of the citizens of this great republic. Could it not be arranged that, with the sanction of the State, some corner in that one park should be preserved as a kind of pleading park, into which the glories of the negative pregnant, *abseque hoc*, *replication de injuria*, *rebutter* and *sir-rebutter*, and all the other weird and fanciful creations of the pleader's brain, might be preserved for future ages, to gratify the respectful curiosity of your descendants, and that our good old English judges, if ever they revisit the glimpses of the moon, might have some place where their weary souls might have rest, some place where they might still find the form preferred to the substance, the statement the thing stated?"

—*Extract from Speech delivered before the N. Y. Bar Ass'n, 1884.*



## ROSCOE CONKLING (1829-1888), New York

### CONKLING ON GEO. W. CURTIS

"Who are these men, who, in newspapers and elsewhere, are cracking the whip over Republicans and playing school-masters to the Republican party and its conscience and convictions. Some of them are man-milliners, and the dilitantes and carpet knights of politics; men whose efforts have been expended in denouncing honest people, who in storm and sun, and war and peace, have clung to the Republican flag and defended it against those who tried to trail it in the dust.

"Some of them are men who, when they could work themselves into conventions, have attempted to belittle and befoul Republican administrations and to parade their own thin veneering of purity. Some of them have sought nominations at the hands of Democrats, and some, with the zeal of neophytes and the bitterness of apostates, have done more than self-respecting Democrats would do to slander their government and countrymen. Some of these worthies masquerade as reformers; their vocation and ministry is to lament the sins of other people. They forget that parties are not built up by deportment or by ladies' magazines or gush. Their stock in trade is rancid self-rightousness. When Dr. Johnson defined partiotism as the last refuge of a scoundrel, he was conscious of the then undeveloped capabilities and uses of the word 'Reform'."—*Roscoe Conkling*.

He refused an Associate Justiceship on the United States Supreme Bench, from President Arthur, in 1882, and was tendered the Chief Justiceship, in 1873, by President Grant, but declined both, as he did a Ministership to England, and the post of Secretary of State. His text-books were the Bible, Shakespeare, and the prose writings of Macaulay, Burke, Pitt, Fox and Erskine. "In affluent and exuberant diction," says Jas. G. Blaine, "Mr. Conkling was never surpassed in either branch of Congress, unless perhaps, by Rufus Choate." And yet, after Blaine's scathing arraignment of Conkling in the H. of R., their speaking acquaintance ceased, and when Conkling was asked to campaign for Blaine for the Presidency, replied; "No, thanks, I never engaged in the criminal practice, and do not care to begin now."

### NEW YORK, WHEN EMANCIPATION WAS PROCLAIMED

"Truth and common sense were hooted and buffeted, and unkennelled cowardice and ignorance barked in hideous chorus. Wantonness and infatuation ruled the hour. Drugged with error, dizzy with fear and maddened with passion, men and women were led from meetings to mobs; from a dance of faction to death. In the City of New York, duped and imbruted thousands rioted in blood; the blade, the bullet and the cup did each its work, and the torch sent up from the Christian soil of that imperial city the smoke of a burning orphan asylum, to tell heaven of the inhuman bigotry, the horrible barbarity of man. Emancipation prevailed, the uplifted banners of opposition and revolt went down, and the nation's flag waved safe conduct to black and white alike, from Mexico to British America."

—*Roscoe Conkling*—*From speech in Senate on the repeal of a resolution of the Legislature of N. Y. ratifying the 15th Amendment, Feb. 22, 1870.*

### DEATH

"Death is nature's supreme abhorrence. The dark valley, with its weird and solemn shadows, illumined by the rays of Christianity, is still



the ground which man shudders to approach. The grim portals and the narrow house seem in the lapse of centuries to have gained rather than lost in impressive and foreboding horror."

—*Roscoe Conkling, —remarks in Senate, upon the death of Oliver P. Morton, Jan. 17, 1878.*

TRUTH: "Truth is a torch; the more you shake it the brighter it burns."

ABRAHAM LINCOLN: "Lincoln was one of those who darken nations when they die."—*Roscoe Conkling.*

THOMAS B. MACAULAY: "Macaulay's Essays are 'freighted with the spoils of all ages'."—*Roscoe Conkling.*

### DRUNKEN WITNESS

"I can see him now, his mouth stretching over the wide desolation of his meaningless face,—a fountain of falsehood and a sepulcher of rum."

—*In Surrogate Court, N. Y. C.*

### PREJUDICE AND SUPERSTITION

"Prejudice and superstition are the children of ignorance. He who harbors prejudice unwittingly is only ignorant, but he who entertains prejudice knowingly, is also corrupt."

—*In the Oleomargerine case, —In Re Bresnehan, 75 Fed. Rep. tried at Kansas City, Mo., before Miller, McCrary and Krekel, JJ.*

### THE FOURTEENTH AMENDMENT

The framers of this great provision builded better than they knew."

—*In U. S. Supreme Court.*

### GENERAL U. S. GRANT

"You ask me what State he comes from? My answer shall be, he hails from Appomattox and its famous apple tree."

—*Conkling, in nominating Gen. Grant for the 3rd time as President in 1880.*

### COMPLIMENT TO THURMAN

"Mr. President, when I turn to the Senator from Ohio, I beg to assure him that I turn to him as the Mussulman turns toward Mecca; I turn to him as I would turn to the common law of England—the world's most copious fount of jurisprudence."

—*While defending Gen'l Sherdian in U. S. Senate, Jan. 28, 1875.*

### REPLY TO WM. PINKNEY WHITE

"Mr. President, not as the last rose of summer, but as the rose of last summer, as the last leaf upon the tree, I beg to offer to the distinguished Senator from Maryland—and I trust that he will receive them—my sincere condolences. As was said of Napoleon at Helena, he is wrapped in the solitude of his own originality. He is the last of the barons, the last of the Mohicans, the last of that long list of statesmen who once belonged to the late Democratic party, and I beg to uncover in the presence of the pale memory of such a thing."—*U. S. Senate, Feb. 3, 1881.*



RUSSELL H. CONWELL (1843- ), Pennsylvania

### ADVICE ABOUT STARTING IN BUSINESS

"The moment a young man or woman gets more money than he or she has gained by practical experience, that moment he or she has gotten a curse. It is no help to a young man or woman to inherit money. It is no help to your children to leave them money, but if you leave them education, if you leave them Christian and noble character, if you leave them a wide circle of friends, if you leave them an honorable name, it is far better than that they should have money at all. Oh, young man, if you have inherited money, don't regard it as a help. It will curse you through your years, and deprive you of the very best things of human life. There is no class of people to be pitied so much as the inexperienced sons and daughters of the rich of our generation. I pity the rich man's son. He can never know the best things in life. One of the best things in our life is when a young man has earned his own living, and when he becomes engaged to some lovely young woman, and makes up his mind to have a home of his own. Then with the same love comes also that divine inspiration toward better things, and he begins to save his money. He begins to leave off his bad habits and put money in the bank. When he has a few hundred dollars he goes out in the suburbs to look for a home. He goes to the savings-bank, perhaps, for half of the value, and then goes for his wife, and when he takes his bride over the threshold of that door for the first time he says in words of eloquence my voice can never touch: 'I have earned this home myself. It is all mine, and I divide with thee.' That is the grandest moment a human heart may ever know."

Now 79, began as a lawyer. The above is taken from his lecture, 'Acres of Diamonds,' which he had delivered in 1915, 5,124 times during his 50 years on the lecture platform, at an average of \$150 per lecture,—thus making over \$1,000,000,—all given to young men to carry them through college, after his expenses are paid.

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### DAVID DUDLEY FIELD NOT A CHEAP LAWYER

On one occasion Field, whose yearly income was \$100,000, was employed by a great corporation to write an opinion on a matter of vital moment to its interest. He bestowed several days upon it, and charged \$5,000. The corporate officers were astounded. Mr. Field said: "Why did you come to me? You know that I am not a cheap lawyer. You knew that you could get an opinion to the same effect for a fifth of the money, from any one of half a dozen lawyers—naming them—which would have commanded respect, but for some reason you came to me. Now I think you came to me because you believed my opinion would be more influential in effecting the result which you desired, and I believe it has been accomplished, and that my opinion contributed largely toward it. Am I not right?" The officers could not gainsay the allegations. "Very well then, gentlemen, you have been benefited to a vast amount through my opinion, and you must pay me my charge, which, all things considered, is a very small one." They paid, and they kept on paying his charges.

—Irving Browne in *"The Lawyers' Easy Chair."* May, 1894.



## THOMAS M. COOLEY (1824-1898), Michigan

### THE BEGINNING OF U. S. HISTORY

"With the triumph of Wolfe on the heights of Abraham, it has been said, began the history of the United States. Voltaire, in his retirement at Ferney, rejoiced at the fall of Quebec, and the immediate surrender of Canada, and celebrated it by a banquet as the precursor of American enfranchisement. But this great event meant more than American enfranchisement; it meant the overthrow of the despotic principles in America, and the surrender of the continent, with all its immense possibilities, to the growing and expanding ideas of English liberty. American enfranchisement from British rule was an event of first importance, but its value to the world would have been infinitely lessened had it not been grounded on the assertion and maintenance of rights assured to the subject of English law. For many centuries now the germs of free institutions have been planted in England, nurtured by the robust thought and defended by the vigorous arms of its people; and when from time to time despotism trampled in the dust the incipient attempts of other nations to win recognition of rights or to gain relief from intolerable burdens, the sea-girt island, in maintaining her independence, preserved her liberties also, and the slow but certain development of free institutions went on unchecked. The two opposing principles in government had now grappled in a final struggle for mastery in America, and when despotism fell, a Britain, no longer needing the protection of the four seas, but stepping boldly out to occupy a continent as master, began immediately to give prophecy of that vast confederacy of commonwealths which was successively to become the rebellious child, the hated rival, and at last the chief glory of the island parent, and the precursor of other confederacies of commonwealths which should speedily give the English tongue and to English liberty an undisputed leadership on both continents."—*American Commonwealths, Michigan, written by Judge Cooley, in 1885.*

### THE RIGHT OF A CITY TO CONTROL ITS EXPENDITURES

"Whoever insists upon the right of the State to interfere and control by compulsory legislation, the action of the local constituency, in matters exclusively of local concern, should be prepared to defend a like interference in the action of private corporations and of National persons. It is as easy to justify on principle, a law which permits the use of the community to dictate to an individual what he shall eat, what he shall drink, and what he shall wear, as to show any constitutional basis for one under which the people of other parts of the State through their representatives dictate to the City of Detroit what fountains shall be erected at its expense for the use of its citizens, or at what cost it shall purchase, and how it shall improve and embellish a park or boulevard for the recreation and enjoyment of its citizens."

—*Decision of Thos. M. Cooley, in Park Commissioner v. Common Council of Detroit, 28 Mich., 228—which asserts the right of local self-government against a legislative attempt to compel a municipal appropriation for the purchase of a public park.*

"In the course of 20 years of judicial life, it has fallen to Judge Cooley to pronounce judgment of the court in very many cases of first importance, among which may be instanced, as the most striking and conspicuous, that of the *People v. Township Board of Salem*, in which the validity of railroad aid bonds was denied, and a ruinous financial policy, which the



Federal Supreme Court and the Courts of nearly every State in the union had countenanced, was checked. Others are *Southerland v. The Governor*, denying the power to control the executive by mandamus; *Youngblood v. The Sheriff*, distinguishing a liquor-tax from a license system; *Stuart v. Kalamazoo School District*, maintaining high schools as part of the common school system supported by taxation; *Park Commissioners v. Common Council*, asserting the right of local self-government against a legislative attempt to compel a municipal appropriation for the purchase of a public park; *People v. Mahaney*, sustaining the legislative establishment of a metropolitan police; *Newcomer v. Van Deusen*, discussing the liability of a keeper of an insane asylum for detaining a sane person whom he believes to be crazy; *Allen v. Duffie*, distinguishing church subscriptions from ordinary Sunday contracts; *Weimer v. Bunburry*, showing that due proceeds of law may also be summary; *Swart v. Kimball*, declaring the right of any person accused of a penal offense to be tried in his own neighborhood; *Benjamin v. Manistee River Improvement Co.*, upholding the right to levy upon a navigable stream; *Macomber v. Nichols*, protecting the use of steam machinery, in the public highways, *Ryerson v. Brown*, denying the protection of the doctrine of eminent domain to the flooding of lands for the benefit of water power mills; and *Gregory v. Wendell* and *People v. Weitoff*, defending the dealing in grain-options and the keeping of a pool-room, as gambling. And from the drift of his opinions and other writings, he has come to be conspicuous as a strong, judicial champion of constitutional rights, of local self-government, and of the freedom of the press, and in some sense as guardian of the agencies of commercial progress and internal development."

—4 *West. Hist. Magazine*, 468-9 (1886)

"If I were called upon to name the most important American legal treatise I should say—'Kent's Commentaries'; if I were put on oath, I am afraid I should have to say, 'Cooley's Constitutional Limitations'."

—*Seymour D. Thompson*.

### AN ACCIDENT

"An accident is an event happening unexpectedly and without fault; if there is any fault, there is liability."—*From 'Torts' 80—note*.

### H. B. HUTCHIN'S ESTIMATE

"Probably no judge upon a State Supreme Court ever left a record that all things considered, is superior to his."

—*H. B. Hutchin, on 'Cooley,' 7 Gt. Am. Lawyers, 460.*

### CONSTITUTIONAL LIMITATIONS

This book, written by Judge Cooley, grew out of his being selected by Charles I. Walker, Judge James V. Campbell and Judge Thos. M. Cooley, the leading law lecturers of Michigan University, selecting him to lecture upon that subject. The book first appeared in 1868, and established his reputation as one of the greatest living authors upon one of the greatest living subjects of the day. The opportunity was not seized, but was thrust upon him, and the performance of the task attests at once his genius and ability as a jurist, in this almost untrodden field of thought. Yet he had difficulty in getting a publisher and it looked for a time as though he would have to be his own publisher. But the manuscript was finally, though with considerable hesitation, accepted by a prominent house, the members of which were surprised as well as gratified by the immediate and great success of the book—which "stands without a rival," says Dean Hutchins: "in form and substance it is and always will be a great legal classic, and has made Judge Cooley's name respected wherever men study American Constitutional law."



## CALVIN COOLIDGE, Massachusetts

### THE U. S. SENATE—A CITADEL OF LIBERTY

"Five generations ago there was revealed to the people of this nation a new relationship between man and man, which they declared and proclaimed in the American constitution. Therein they recognized a legislature empowered to express the will of the people in law, a judiciary required to determine and state such law, and an executive charged with securing obedience to the law, all holding their office, not by reason of some superior force, but thru the duly determined conscience of their countrymen. To the House, close to the heart of the nation, renewing its whole membership by frequent elections, representing directly the people, reflecting their common purpose, has been granted a full measure of the power of legislation and exclusive authority to originate taxation. To the Senate, renewing its membership by degrees, representing, in part, the sovereign States, has been granted not only a full measure of the power of legislation, but, if possible, far more important functions. To it is intrusted the duty of review, that to negotiations there may be added ratification and to appointment approval. But its greatest function of all, too little mentioned, and too little understood, whether exercised in legislating or reviewing, is the preservation of liberty; not merely the rights of the majority—they little need protection—but the rights of the minority, from whatever source they may be assailed. The great object for us to seek here, for the constitution identifies the Vice-Presidency with the Senate, is to continue to make this chamber, as it was intended by the fathers, a citadel of liberty. An enormous power is here conferred, capable of much good or ill, open it may be to abuse, but necessary wholly and absolutely necessary to secure the required result to whatever its faults, whatever its human imperfections. There is no legislative body in all history that has used its power with more wisdom and discretion, more uniformly for the execution of the public will, or more in harmony with the spirit of the authority of the people which has created it, than the United States Senate.

I take up the duties the people have assigned me under the constitution, which we can neither enlarge nor diminish, of presiding over this Senate, agreeably to its rules and regulations, deeply conscious that it will continue to function in harmony with its higher traditions as a great deliberate body, without passion, and without fear unmoved by clamor, but most sensitive to the right, the stronghold of government according to law, that the vision of the past generations may be more and more the reality of generations yet to come."

—*When sworn in as Vice-President, Mar. 4, 1921, in U. S. Senate.*

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### THE MIND—RUFUS CHOATE

"The idea that there is a want of sympathy in the mass of the people with an educated man's mind, is much exaggerated in general belief. Any fine thought, or rich expression is apprehended by the common mind somehow; vaguely at first; but so almost any thought is, at first, vaguely and uncertainly apprehended by any but a thoroughly trained mind."

### CHOATE ON READING

"Happy is he who has laid up in his youth, and held fast in all fortune, a genuine and passionate love for reading."



## THOMAS CORWIN (1794-1865), Ohio

### ADVICE TO AN OFFICE-SEEKER

"I may give you a place to-day, and I can kick you out to-morrow. And there is another man over there at the White House, who can kick me out, and the people by and by can kick him out, and so it goes; but if you own an acre of land, it is your kingdom, and your cabin is your castle."

—*To a young man, seeking office in Washington, D. C., while Corwin was Secretary of the Treasury.*

### BE SOLEMN AS AN ASS

"The late Tom Corwin, of Ohio, a man of genius and infinite humor, on one occasion, when lecturing me for my disposition to joke with a crowd, said:—

" 'Don't do it, my boy. You should remember that the crowd always looks up to the ring-master and down on the clown. It resents that which amuses. The clown is the more clever fellow of the two, but he is despised. If you would succeed in life, you must be solemn, solemn as an ass. All the great monuments of earth have been built over solemn asses.' "

—*Don Piatt, 'Men Who Saved the Union,' 95.*

### JURY,—THE BEST SCHOOL FOR A LAWYER

"The best school for a lawyer is a two years' service on the jury; without the knowledge gained there, the advocate is certain to fire over the heads of the twelve good and true gentlemen of the panel."

—*Piatt's 'Men Who Saved the Union,' p. XXI.*

### CORWIN MORE THAN A WIT,—A GOOD LAWYER

"But Corwin was more than a witty stump speaker. He was a good lawyer, who thought deeply on the principles of government and political questions. His friends had hopes that he might even reach the Presidency; but he destroyed his political prospects by an indiscreet though brave speech in the Senate in February, 1847, on the Mexican War, in retort to Lewis Cass, who had said—"We want room," replied Corwin: "If I were a Mexican, I would tell you,—"Have you not room in your own country to bury your dead men? If you come into mine, we will greet you with bloody hands and welcome you to hospitable graves.'" This is no worse than Chatham:—"If I were an American, as I am an Englishman, while a foreign troop was landed in my country, I never would lay down my arms—never—never—never.'" —*1 Rhodes' U. S. Hist., 300.*

### "PEPPER AND SALT"

Corwin, when Governor of Ohio, was on a political speaking tour with Tom Ewing, through the State, and stopped over night at the home of a leading politician, who had invited them to do so, but happened to be away from home; but instructed his niece, if they came to give them the "best in the house," for they were "great men". While waiting on the table at tea that evening, she thought she must use big words, with "big guests," and accordingly, asked Ewing, if he would have condiments in his tea. He replied: "Yes, if you please." Corwin's eyes twinkled. This was too great a temptation; accordingly when she



accosted him with the same question, he replied: "Pepper and salt, please, but no mustard!"

It is said the lady never forgave him, declaring that the Governor was horrible and vulgar.

### GREAT ORATOR AND STORY TELLER

"Of Mr. Corwin, it is not too much to say that in wit, in humor, in language, in voice, in nobility, and expressiveness of features, in all the requisites for fascinating and effective stump oratory, he was without an equal. Men would travel twenty and thirty miles to listen to the matchless orator, and even his political opponents could not help joining in the applause which his speeches never failed to call forth. His memory was not only a perfect storehouse of historical facts, but also of anecdotes and stories. It was worth a 'Sabbath day's journey' to hear 'Tom Corwin' (as he was familiarly called) tell a story, no matter how frequently heard, it was always made fresh and racy by his variable and inimitable manner of telling it. While to his extraordinary control of the muscles of his face, which were always in accord with the sentiments he was expressing, and the anecdotes he was relating, and to his charming voice, the attractiveness of his speeches was in no small degree attributable. They were never lacking in eloquence or force. He had always something good to say, and he never failed to be instructive as well as fascinating. His power over popular and promiscuous assemblies, was immense. Plain farmers would not only travel long distances to hear him, but they would stand for hours under a burning sun, or in a pelting rain, seemingly oblivious of everything but the speeches by which their attention was absorbed. Nor was his fame as an orator confined to Ohio. By his speeches in Congress, he acquired a national reputation."

—*Hugh McCulloch's 'Men and Measures of Half a Century.'*  
62-3.

### THE CREDULOUS WITNESS

(It is said Corwin was once trying a case, in which he was opposed by William Wirt, when the latter tried a somewhat novel mode of discrediting a witness, called by Corwin, upon whose accuracy and discrimination, everything turned, as he was Corwin's chief witness. Wirt undertook to show by him that he would believe most anything he was told. The following cross-examination by Wirt, was had):—

Q, by Wirt: "Have you read Robinson Crusoe?"

A. "Yes, sir."

Q. by Wirt: "Do you believe it all to be true?"

A. "Well, yes, squire, I don't know but what I do."

(The same, or similar answers were returned as to Gulliver's Travels, and several other works of fiction, Corwin all the time fidgeting and getting hot. Finally Mr. Wirt, considering the witness entirely flattened out, resigned him, with a bland smile.

Mr. Corwin, said he had only one or two questions to ask the witness, and put it this way:—

Q. "Have you ever read William Wirt's Life of Patrick Henry?"

A. "Yes, sir, I have."

Q. "Do you believe it to be true?"

A. "Why, no, squire, I can't quite go that."

### GIDEON WELLES ON CORWIN

"The President (Abraham Lincoln) gives his ear to a class of old party hacks like Ewing and Corwin, men of ability and power, in their day, for whom he has high regard, but who are not fit to come here and persuade the President wrong."—*2 Diary, 202.*



## CORWIN'S COMPLEXION

"Corwin's complexion was very dark. He was on several occasions supposed to be of African descent, and he was fond of relating these ludicrous mistakes. One of his keen retorts was made, when addressing a Whig mass-meeting at Marietta, Ohio. He had then great anxiety not to offend the Abolitionists, who were beginning to cast a large vote. A sharp-witted opponent to draw him out asked: 'Shouldn't niggers be permitted to sit at table with white folks, on steamboats, and at hotels?' 'Fellow-citizens,' exclaimed Corwin, his swarthy features beaming with suppressed fun, 'I ask you whether it is proper to ask such a question of a gentlemen of my color?' The crowd cheered, and the questioner was silenced."

—1 *Rhodes' U. S. History*, 299; 2 *Ben Perley Poore's Reminiscences*, 209.

## ANDREW D. WHITE'S TRIBUTE

"He was the most famous stump-speaker of his time, and perhaps of all times, a man of great physical, intellectual and moral vigor; powerful in argument, sympathetic in manner, of infinite wit and humor."

## HIS TWO MOST FAMOUS SPEECHES

His speech, in 1840, in ridicule of Isaac M. Crary, of Michigan, who had ponderously arraigned Gen. W. H. Harrison; and that (1847) in opposition to the Mexican War.

## ON AFRICAN SLAVERY

(Mr. Reagan asked:—"Then I ask the gentleman for himself, and not for the Republican party, if he recognizes the right of people owning slaves to go into a territory in a Southern latitude, and occupy that territory with their slaves with the protection of the Government?")

To Which Mr. Corwin replied:—

"I will speak for myself. If you acquire territory by treaty, and the people in it hold slaves, I would not, against their will, interfere with Slavery there. I would act, in that particular, just as the Congresses of 1798 and 1804 acted in relation to Mississippi and Orleans Territories. If Slavery were there, I would not disturb it. I would not interfere with the rights of property against the will of the people; and if you get territory where the white man cannot work, I would permit people of the States to send their slaves there; and when there, certainly, I would protect them, if protection were wanted. I agree with the gentleman of the extreme South in one point: whenever you can show me, that under the laws and the Constitution of the United States (as you phrase it, under the Constitution) Slavery is lawfully in a Territory, I hold it to be a duty to make laws to protect property lawfully held anywhere, if such laws be necessary for its protection; but remember, I do not believe the Constitution takes Slavery into Territories, or anywhere else. Slavery is the creature of local, municipal law. Whenever you acquire a territory where Slavery exists, if you have a treaty sanctioned by two-thirds of the Senate of the United States, you are just as sure of Slavery as we are sure of what we call 'freedom' in Ohio. I dare say that some of my tender-footed brethren on the Republican side of the House wince a little at that, but I act upon possibilities and probabilities. And there is another thing which you do, which is totally at war with one of the fundamental maxims of our Government. You begin by sending forth to the world the very doctrines of Rousseau's social compact—that Government claims its rightful authority from the consent of the people governed. And then you conquer a country, and a part is ceded to you,



but no consent of the people thus ceded is ever asked. You seize them and govern them, whether they consent or not. You did not ask the people of California, or New Mexico whether they were willing to be American citizens. You took the treaty, and you took the lands and the people. So when you get Cuba—which you will not get soon; but whenever you do get it, if you ever should, Slavery will be there; and the Spanish Government, when it cedes this island, will say that you shall take the people, with all their rights of property. That is sure to be done, if the time ever arrives when you are to acquire Cuba. So if you acquire territory where white men cannot work. There are such countries; I have been told so by the best physicians I ever knew. What do you want with such territory, unless you have slaves, if it be true that free negroes will not work without coercion? If I were the father of the world, and I had some children who could work in cold and temperate climates, I would send them there to work; and if I had children who would work only in the warmer portions of the globe, I would send them there; and if they would not go, I would make them. I am not speaking of constitutional law. I look at society as it is. What will you do with the men who will not work, and will eat? I know what we do with them in Ohio. We send them to the poor-house, and make them work. Some, for reasons known to the law, are sent to the penitentiary, where they are deprived of their inalienable right, to liberty. That is a question we cannot discuss here. I state for the benefit of weak brothers, who never think about the matter, (Laughter) if my white son would not work in the proper place for him, I would punish him; and if I had a black man, who, like the anaconda, fattened upon malaria, and only lived well in a rice swamp. There I should make him go.”

—*Speech in the House of Representatives, Jan. 23rd and 24th., 1860.*

## LAWS OF THE LAND AND MORAL LAW

“Are you then, under any moral obligation to obey the laws when they are made? I say you are. I say every clergyman is under that obligation. Every man, every woman and every child when he comes to years of accountability, have imposed upon them a moral obligation, the discharge of which will be accounted and acceptable service at that great tribunal, where we must all stand after our ignorance has gone, and when we stand in the sunlight of eternity. How the pardoning power may be exercised when poor ignorant man stands up, saying that it was conscience that taught him it was right to disobey law, I have no knowledge . . . . . But what then? A gentleman rises up from prayer and says that a law is very wrong; that it commands a wicked thing; he cannot obey it. There are two alternatives for such a man, exile and the grave. Either of them is very unpleasant to weak humanity.”

—*From a lecture in Henry Ward Beecher's church, whose pastor, Mr. Beecher, denounced the fugitive slave law, and declared 'the law of God is above all laws, national or state, constitutional or unconstitutional, and must first be obeyed.'* Corwin gave the above in 1859.

## NAPOLEON AND THE BURNING OF MOSCOW

“But has Prussia no atonement to make? You see this same Napoleon, the blind instrument of Providence, at work there. The thunders of his cannon at Jena proclaim the work of retribution for Poland's wrongs; and the successors of the Great Frederick, the drill-sergeant of Europe, are seen flying across the sandy plain that surrounds their capital, right glad if they may escape captivity or death. But how fares it with the Autocrat of Russia? Is he secure in his share of the spoils of Poland? No. Suddenly we see, sir, six hundred thousand armed men marching to Moscow. Does his Vera Cruz protect him now? Far from it. Blood,



slaughter, desolation spread abroad over the land, and finally the conflagration of the old commercial metropolis of Russia closes the retribution she must pay for her share in the dismemberment of her weak and impotent neighbor. Mr. President, a mind more prone to look for the judgment of Heaven in the doings of men than mine, cannot fail in this to see the providence of God. When Moscow burned, it seemed as if the earth was lighted up, that the nations might behold the scene. As that mighty sea of fire gathered and heaved and rolled upward, and yet higher, till it licked the stars, and fired the whole heavens, it did seem as though the God of the nations was writing in characters of flame on the front of his throne, that doom that shall fall upon the strong nation which tramples in scorn upon the weak. And what fortune awaits him, the appointed executor of this work, when it was all done? He, too, conceived the notion that his destiny pointed onward to universal dominion. France was too small—Europe, he thought, should bow down before him. But as soon as this idea took possession of his soul, he, too, becomes powerless. His terminus must recede, too. Right there, while he witnessed the humiliation, and doubtless meditated the subjection of Russia. He who holds the winds in His fist gathered the snows of the north and blew them upon his six hundred thousand men; they fled—they froze—they perished. And now the mighty Napoleon, who had resolved on universal dominion, *he* too, is summoned to answer for the violation of that ancient law, 'thou shalt not covet anything which is thy neighbor's.' How is the mighty fallen! He, beneath whose proud footstep Europe trembled, he is now an exile at Elba, and now finally a prisoner on the rock of St. Helena, and there, on a barren island, in an unfrequented sea, in the crater of an extinguished volcano, *there* is the death-bed of the mighty conqueror. All his *annexations* have come to that! His last hour is now come, and he, the man of *destiny*, he who had rocked the world as with the throes of an earthquake, is now powerless, still—even as a beggar, so he died. On the wings of a tempest that raged with unwonted fury, up to the throne of the only Power that controlled him while he lived, went the fiery soul of that wonderful warrior, another witness to the existence of that eternal decree, that they who do not rule in righteousness shall perish from the earth.

"He has found 'room' at last. And France, *she*, too, has found 'room.' Her 'eagles' now no longer scream along the banks of the Danube, the Po, and the Borysthenes. They have returned home, to their old eyrie, between the Alps, the Rhine and the Pyrenees; so shall it be with yours. You may carry them to the loftiest peaks of the Cordilleras, they may wave with insolent triumph in the Halls of the Montezumas, the armed men of Mexico may quail before them, but the weakest hand in Mexico, uplifted in prayer to the God of Justice, may call down against you a Power, in the presence of which, the iron hearts of your warriors shall be turned into ashes."—*From speech on the Mexican War, in U. S. Senate, Feb. 11, 1847.*

### VOTER SHOULD BE INTELLIGENT

"As I have traveled through the country and beheld the church-spires and school houses, it seemed incomprehensible how with the advantages of education and instruction from the pulpit, there could be a generation of men who would disregard the lessons of experience and the teachings of history so much as to fail in the giving of an intelligent and patriotic vote. \* \* \* \*

"The hand of the Almighty is as plain to be seen in the interposition in our behalf during the revolutionary struggles as it was in the rolling waves of the Red Sea over the hosts of Pharaoh as they were pursuing the Israelites. We could not hope to escape the fate of the 'chosen people' in whose history were so terribly fulfilled the words of prophecy, unless we appreciated our blessings and struggled to preserve our birth-right; and yet the history of man seemed to be the same in all ages,



three thousand years ago, when the Almighty, by a miraculous exercise of His power, had brought the children of Isreal out of their Egyptian captivity, we found them, when it might have been supposed that the wonder of the miracle was still impressing them with its awful grandeur, worshipping the golden calf!

"The prophet Isaiah, in denouncing the sins and the punishment of Judah, had said:—'The ox knoweth his owner, and the ass his master's crib; but Israel doth not know—my people, doth not consider.' The people did not 'consider'—they did not *think*. Every man should break away from the trammels of party—he should *think*—think for himself—and so discharge his duty, as if knowing that upon him alone rested the responsibility of faithfully and honestly acting for the welfare of the twenty-six millions of this nation—as if he were the only man who had a vote—as if he were possessed of despotic power, and his will was the law."

—*From speech at Dayton, O., Sep. 30, 1858.*

Perhaps no orator, not of the pulpit, ever drew more frequent illustrations from the Bible. Like Fisher Ames, he is said to have been a constant reader of the Bible, and to have greatly admired the simplicity and purity of the language of the common English version. His mind was well stored with biblical history and deeply imbued with the bold and tender imagery of Hebrew poetry. He sometimes advised a law student to read the Bible as a first book in his course of studies.—*Author.*

#### RIDICULE OF GEN. ISAAC E. CRARY

"Alexander the Great spurred his horse foremost into the river, and led his Macedonians across the Granicus to rout the Persians who stood full opposed on the other side of the stream. True, this youth conquered the world and made himself master of what had constituted the Medean, Persian, Assyrian and Chaldean empires. Still, according to the judgment of us warriors by nature, the mighty Macedonian would have consulted good sense by coming over here, if, indeed, there were any hereabouts in those days, and studying, like my friend from Michigan, first Tidd's Practice and Espinasse's Nisi Prius and a little snatch of Steuben, and serving as a general of militia awhile. Sir, Alexander the Great might have made a man of himself in the art of war, had he even been a member of our Congress, and heard us colonels discuss the subject of an afternoon or two, Indeed, Alexander, or Satan, I doubt not, would have improved greatly in strategy by observing, during this session, the tactics of the Administration party on the New Jersey election question. Mr. Speaker, this objection to a general, because he will fight, is not original with my friend from Michigan. I remember a great authority, in point, agreeing with the gentleman in this. In the times of the Henrys, 4th, and 5th, of England, there lived one Captain Jack Falstaff. If Shakespeare may be trusted, his opinions of the art military were exactly those of the gentleman from Michigan. He uniformly declared as his deliberate judgment on the subject, that 'discretion was the better part of valor' and this is an authority for the gentleman. But who shall decide? Thus the authority stands—Alexander, the mighty Greek, and Napoleon Bonaparte and Harrison on one side, and Captain John Falstaff and the General from Michigan on the other! Sir, I must leave a question thus sustained by authorities both ways to posterity. Perhaps the lights of another age may enable the world to decide it; I confess my inability to say on which side the weight of authority lies."

—*From speech in answer to the Hon. Isaac E. Crary, of Michigan, in criticism of the military conduct of Gen. Wm. H. Harrison, House of Representatives, Feb. 14, 1840.*



## SAMUEL SHELLABARGER ON HIS DEATH

"When we laid him down he soon said to us, by a significant act, what he could not say by speech—'one side of me is dead.' (He died with a paralytic stroke.) And there at night I parted with that stricken man. He, who touched with the sceptre of his imperial and God-like intellect States, Nations, People, Courts and Senators, and made them all bow to the majesty of its power, was now touched—in his turn—touched by the sceptre of his Lord, and instantly bowed his head, and laid himself submissively down and died.

" \* \* \* —————our hearts, though young and brave,  
Still like muffled drums are beating  
Funeral marches to the grave'."

—*From a letter written by Samuel Shellabarger, who happened to be sojourning in Washington when Corwin died there from paralysis.*

## COL. R. G. INGERSOLL'S REVERENCE FOR CORWIN

It is said that Col. Ingersoll, being booked for a lecture in Lebanon, Ohio, the burial place of Corwin, where the inhabitants thereof had never marked his grave with even a slab, wrote the committee:—

"I hereby cancel my engagement to lecture in your city. Any people so inhospitable as not to even mark the last, sad resting place of a great man like Corwin, are not worthy of a few thoughts from me!"

## THE U. S. SUPREME COURT, BY EDWARD J. PHELPS

"We cannot forget that the origin of the United States Supreme Court was an experiment, untried and uncertain. Judicial history has not furnished another example of a court created by an authority superior to legislation and beyond the reach of executive power, clothed with a jurisdiction above the law it was appointed to administer, and charged, not merely with the general course of public justice, but with the limitation of the powers of political government, and the adjustment of the conflicting claims of sovereign States. The hundred years that now terminate have tested the value of all American institutions. Fortunate as they have been for the most part, it will yet be the judgment of dispassionate history that no other has so completely justified the faith of its authors, or fulfilled with such signal success the purpose of its foundation. \* \* \* Its principal and largest function was designed to be, as it has been, the defence and preservation of the Constitution that created it as the permanent fundamental law on which our system of government depends. Had that instrument been left only directory to the legislature, to be construed and given effect as the exigencies of party or the purposes of the hour might demand; had it been referred to the conflicting determination of various courts, with no supreme arbiter to correct their mistakes, or to harmonize their disagreements, so that its meaning might depend upon the State or the tribunal in which the question happened to arise, it would speedily have become but the shadow of an authority that had no real existence, fruitful in a discord it was powerless to allay. American experience has made it an axiom in political science that no written constitution of government can hope to stand without a paramount and independent tribunal to determine its construction and to enforce its precepts in the last resort. This is the great and foremost duty cast by the Constitution, for the sake of the Constitution, upon the Supreme Court of the United States."—*Delivered at the Centennial Anniversary of the U. S. Supreme Court, Feb. 4, 1890, in New York City, under the auspices of the New York Bar Association.*



## JOHN J. CRITTENDEN (1787-1863), Kentucky

### TRUTH, JUSTICE AND MERCY

"I have somewhere heard or read a story from one of those transcendent German writers, which tells us that when the Almighty designed to create man, the various angels of his attributes came in their order before Him and spoke of his purpose. Truth said: 'Create him not, Father. He will deny the right, deny his obligations to Thee, and deny the sacred and inviolate truth, therefore, create him not.' Justice said: 'Create him not, Father. He will fill the world with injustice and wrong—he will desecrate Thy holy temple—do deeds of violence and of blood, and in the very first generation—he will wantonly slay his brother. Therefore, create him not.' But gentle Mercy knelt by the throne and whispered: 'Create him, Father. I will be with him in all his wanderings—I will follow his wayward steps—and by the lessons he shall learn from the experience of his own errors, I will bring him back to Thee.' And thus concludes the writer, learn, Oh man, mercy to thy fellowman, if thou wouldst bring him back to thee and to God."

—*John J. Crittenden, defense of Matt F. Ward for shooting W. H. G. Butler, in Louisville, Ky., principal of the Louisville High School. The trial was had in Hardin Co., Ky., Apr. '54. Thos. F. Marshall was also for defense. Verdict, 'Not guilty?'*

### REPLY TO A WINDY LAWYER

"Gentlemen of the Jury (rubbing his hand several times over his eye-lids) I have either slept or dreamed, or I have had a vivid waking dream, which I can scarcely dispel. I thought I had gone out on a whaling vessel, the winds and waves were high, and the mighty waters were roaring around me. Suddenly the sailors cried out, 'All hands on deck, the whale is upon us, she blows!' I looked, and there, indeed, was the monster of the deep; its tail was flying through the air and the surging waves, till we were enveloped in mist. I am stunned, confused, and your Honor must grant me a few moments to recover my self-possession."

—*John J. Crittenden, Ky. (1787-1863). From reply to General Flournoy, who had torn up sky and earth in an argument for the prosecution.*

He, Crittenden, was Attorney-General of the U. S., 1850-3; nominated by President J. Q. Adams, in 1829, an Associate Justice of the U. S. Supreme Court, but not confirmed.

"One of the noblest intellects of his generation," says Benjamin Perley Poore.

"Inferior to no man in America as a professional lawyer and eloquent orator, and was of as pure and incorruptible integrity as any man who ever lived,"—*Ben Hardin, p. 356, in his Life by Lucius P. Little.*

### WHY LAWS ARE MADE

"It is upon a want of confidence in men that all human law is made. With a perfect confidence in men, why are your laws made against murder, against theft, against robbery? Why do nations all over the world cry out for written constitutions?"

—*John J. Crittenden, From Farewell to Senate, 1861.*



## AGAINST SECESSION

"I do not agree that there is no power in the President to preserve the Union; I will say that now. If we have a Union at all, and if, as the President thinks, there is no right to secede on the part of any State (and I agree with him in that), I think there is a right to employ our power to preserve the Union."

—*In U. S. Senate, Dec. 4, 1860, 2 Nicolay and Hay's Life of A. Lincoln, 404.*

Mr. Crittenden was appointed by J. Q. Adams attorney for the United States, for the District of Ky., in 1827, but was removed by General Jackson in '29. The same year, he was nominated by President Adams to fill the vacancy on the U. S. Supreme Bench occasioned by the death of Judge Trimble. A partisan Senate, resolved not to act during a recess of Congress, and thus gave Gen. Jackson a chance to fill the vacancy. "Kept in the shade by Clay, he became somewhat crabbed, but his was one of the noblest intellects of his generation. His persuasive eloquence, his sound judgment, his knowledge of law, his lucid manner of stating facts, and his complete grasp of every case which he examined had made him a power in the Senate and in the Supreme Court, as he was destined to be in the cabinet, Attorney-General, under President Harrison."

—*2 Perley's Rem., 250.*

Born in 1787, educated at William and Mary college, 1807-9; Attorney-General of Territory of Ill., 1829-35; U. S. Senator from Ky., 1827; Attorney-General of the United States, 1850-3; argued *Warring v. Clarke* (5 Howard, 441) for defendant, opposed by Reverdy Johnson. Was Governor of Ky., 1848-50.—*Author.*

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 WENDELL PHILLIPS' DEVOTION TO ANTI-SLAVERY

Just after Wendell Phillips was admitted to practice law, he saw a mob, composed of the best citizens of Boston, in October, 1835, denying to American women the right of liberty—insulted for befriending their innocent sisters, whose children were sold from their arms. He saw an American citizen (Garrison) assailed by a furious mob in the City of James Otis, for saying with James Otis that man's right to liberty is inherent and inalienable; and he said:—

"I love inexpressibly these streets of Boston over which my mother led my baby feet, and if God grants me time enough I will make them too pure for the footsteps of a slave!"

And so Phillips gave up the practice of law, and dedicated his life to that service.

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 PRACTICE

"The theory of swimming is easy enough, not so the practice. Plunge in, strike out with a good breast stroke, draw in and thrust back your feet and there you are,—at the bottom."

—*Richard Harris, 'Hints on Advocacy,' English writer.*



## JOHN PHILPOT CURRAN (1750-1817), Ireland

### THE LIBERTY OF THE PRESS

“What then remains? The liberty of the press only, that sacred palladium which no influence, no power, no minister, no government, which nothing by the depravity or folly or corruption of a jury can ever destroy. And what calamities are the people saved from by having public communication left open to them? I will tell you, gentlemen, what they are saved from; I will tell you, also, to what both are exposed by shutting up that communication. In one case, sedition speaks aloud and walks abroad; the demagogue goes forth; the public eye is upon him; he frets his busy hour upon the stage; but soon either weariness, or bribe, or punishment, or disappointment bears him down or drives him off, and he appears no more.

“In the other case, how does the work of sedition go forward? Night after night the muffled rebel steals forth in the dark and casts another and another brand upon the pile, to which, when the hour of fatal maturity shall arrive, he will apply the torch. If you doubt of the horrid consequences of suppressing the effusion even of individual discontent, look to those enslaved countries where the protection of despotism is supposed to be secured by such restraints. Even the person of the despot there is never in safety. Neither the fears of the despot, nor the machinations of the slave have any slumber, the one anticipating the moment of peril, the other watching the opportunity of aggression.

“The fatal crisis is equally a surprise upon both; the decisive instant is precipitated without warning, by folly on the one side, or by frenzy on the other; and there is no notice of the treason till the traitor acts. In those unfortunate countries, one can not read it without horror—there are officers whose province it is to have the water which is to be drunk by their rulers sealed up in bottles lest some wretched miscreant should throw poison into the draught.

“But, gentlemen, if you wish for a nearer and more interesting example, you have it in the history of your own revolution. You have it at the memorable period when the monarch (James II) found a servile acquiescence in the ministers of his folly, when the liberty of the Press was trodden under foot, when venal sheriffs returned packed juries, to carry into effect those fatal conspiracies of the few against the many, when the devoted benches of public justice were filled by some of those foundlings of fortune who, overwhelmed in the torrent of corruption at an early period, lay at the bottom like drowned bodies while soundness or sanity remained in them; but at length, becoming buoyant by putrefaction, they rose as they rotted, and floated to the surface of the polluted stream, where they were drifted along, the objects of terror, and contagion, and abomination.

“In that awful moment of a nation’s travail, of the last gasp of tyranny and the first breath of freedom, how pregnant is the example! The press extinguished, the people enslaved, and the prince undone. As the advocate of society, therefore, of peace, of domestic liberty, and the lasting union of the two countries, I conjure you to guard the liberty of the Press, that great sentinel of the State, that grand detector of public imposture; guard it because, when it sinks, there sinks with it in one common grave, the liberty of the subject, and the security of the Crown.”

—*Speech in defense of A. H. Rowan, for seditious libel, 1794.*

It was in this case that Curran began a series of defenses in State Trials, which form the chief basis of his fame as an orator.—*The Author.*



## SLAVERY

"No matter in what language his doom may have been pronounced; no matter what complexion incompatible with freedom an Indian or an African sun may have burned upon him; no matter in what disastrous battle his liberty may have been cloven down; no matter with what solemnities he may have been devoted upon the altar of slavery; the first moment he touches the sacred soil of Britain, the altar and the god sink together in the dust; his soul walks abroad in her own majesty; his body swells beyond the measure of his chains that burst from around him, and he stands redeemed, regenerated, and disenthralled by the irresistible genius of universal emancipation."

—*From Speech in defense of A. H. Rowan, for seditious libel.*

## TRIBUTE TO SCOTLAND

"We measure inaccessible heights by the shadows which they project, where the lowness and the distance of the light form the length of the shade. There is a sort of aspiring and adventurous credulity which disdains assenting to obvious truths and delights in catching at the improbability of circumstances as its best ground of faith. To what other cause, gentlemen, can you ascribe that, in the wise, the reflecting, and the philosophic nation of Great Britain, a printer has been found guilty of a libel for publishing those resolutions to which the present minister of that kingdom had actually subscribed his name?

"To what other cause, can you ascribe, what in my mind is still more astonishing, in such a country as Scotland, a nation cast in the happy medium between the spiritless acquiescence of submissive poverty and the sturdy credulity of pampered wealth; cool and ardent, adventurous and persevering; winging her eagle flight against the blaze of every science, with an eye that never winks, and a wing that never tires; crowned as she is with the spoils of every art, and decked with the wreath of every muse; from the deep and scrutinizing researches of her Hume, to the sweet and simple, but not less sublime and pathetic, morality of her Burns, how from the bosom of a country like that, genius and character and talents should be banished to a distant, barbarous soil; condemned to pine under the horrid communion of vulgar vice and base-born profligacy for twice the period that ordinary calculation gives to the continuance of human life? But I will not further press any idea that is painful to me and I am sure must be painful to you."

—*Also from his speech in defense of A. H. Rowan.*

Says Thos. Davis, p. 39, in his *Life of Curran*: "His vindication of the volunteers, and the liberty of the Press, in the Rowan case, are all his own, and unapproached, by anything in Cicero or Erskine."

Lord Brougham, in his defense of Hunt, pronounces Curran's speech in defense of Rowan, "the most eloquent speech ever delivered at the Bar," and Brougham was the first of England's oratorical critics.

## A FADED, FALLEN AND DISGRACED WIFE, DAMAGES TO HUSBAND

"The learned counsel has told you that this unfortunate woman (Mrs. Massey) is not to be estimated at forty thousand pounds. Fatal and unquestionable is the truth of this assertion. Alas! gentlemen, she is no longer worth anything; faded, fallen, degraded and disgraced, she is worth less than nothing. But, it is for the honor, the hope, the expectation, the tenderness and the comforts that have been blasted by the defendant, and have fled forever, that you are to remunerate the plaintiff by the punishment of the defendant. It is not her present value which you are to weigh; but it is her value at that time, when she sat basking



in a husband's love with the blessing of Heaven on her head, and its purity in her heart; when she sat among her family and administered the morality of the parental board; estimate that past value, compare it with its present value, compare it with its deplorable diminution, and it may lead you to form some judgment of the severity of the injury and the extent of the compensation.

"The learned counsel has told you you ought to be cautious, because your verdict cannot be set aside for excess. The assertion is just; but has he treated you fairly by its application? His cause would now allow him to be fair, for why is the rule adopted in this single action? Because, this being practically an injury to the most susceptible of all human feelings, it leaves the injury of the husband to be ascertained by the sensibility of the jury, and does not presume to measure the justice of their determination by the cold and chilly exercise of its own discretion. In any other action it is easy to calculate. If a tradesman's arm is cut off, you can measure the loss which he has sustained; but the wound of feeling and the agony of the heart cannot be judged by any standard with which I am acquainted. You are, therefore, unfairly dealt with when you are called on to appreciate the present suffering of the husband by the present guilt, delinquency and degradation of his wife. As well might you, if called on to give compensation to a man for the murder of his dearest friend, to find the measure of his injury by weighing the ashes of the dead. But it is not, gentlemen of the jury, by weighing the ashes of the dead that you would estimate the loss of the survivor."

—*John P. Curran, in Massy v. Headfort, for criminal conversation, and obtained a verdict for 10,000 pounds, equivalent to \$50,000.*

"This speech," says Thos. Davis, Curran's biographer, "against Lord Headfort (largely colored by Curran's own experience, as his wife of 25 years, left him to go with Rev. Mr. Sandys) is beyond comparison the most persuasive pleading ever uttered in a case not involving national interests or public passions. By his ability and his personal sympathy for the case, he made it a great contest between virtue and vice."

### THE FAMILY ALTAR

"There is another consideration, gentlemen, which, I think, most imperiously demands even a vindictive award of exemplary damages, and that is the breach of hospitality. To us peculiarly does it belong to avenge the violation of its altar. The hospitality of other countries is a matter of necessity or convention; in savage nations of the first, in polished of the latter; but the hospitality of an *Irishman* is not the running account of posted and legered courtesies, as in other countries; it springs, like all his qualities, his faults, his virtues, directly from his heart. The heart of an Irishman is by nature bold, and he confides; it is tender, and he loves; it is generous, and he gives; it is social and he is hospitable. This sacrilegious intruder has profaned the religion of that sacred altar so elevated in our worship, so precious in our devotion; and it is our privilege to avenge the crime. You must either pull down the altar and abolish the worship, or you must preserve its sanctity undebased. There is no alternative between the universal exclusion of all mankind from your threshold, and the most rigorous punishment of him who is admitted and betrays. This defendant has been so trusted, has so betrayed, and you ought to make him a most signal example."

—*John P. Curran, Massy v. Headfort.*

### PENALTY ACCORDING TO CRIME

"I make the observation, not only in order to call upon you to discharge any impression not supported by testimony, but to remind you



also of another incontrovertible maxim, not only of the human law of England, but of eternal justice upon which that is founded, that the more horrid and atrocious the nature of any crime charged upon any man is the more clear and invincible should be the evidence upon which he is convicted. Therefore, gentlemen, I presume to tell you, that in proportion as the crime is atrocious and horrible, in the same proportion ought the evidence to be clear and irresistible. Let me, therefore endeavor to discharge the duty I owe to the unfortunate man at the bar, (for unfortunate I consider him, whether he be convicted or acquitted) by drawing your attention to a consideration of the facts charged, and comparing it with the evidence adduced to support it. As the coroner upon an inquest of murder, who thought a man standing by was guilty. Why?—because three drops of blood fell from his nose. This was thought to be invincible proof of his guilt. It reminds me also of an old woman who undertook to prove that a ghost had appeared. ‘How do you know there was a ghost in the room?’ ‘Oh! I’ll prove to you there must have been a ghost,—for the very moment I went in, I fainted flat on the floor!’ ”—*John P. Curran,—Trial of the Dublin Defenders.*

### THE IMPORTANCE OF AN OATH

“But, gentlemen, suppose I am mistaken in both points of my argument; suppose the prisoner (if the evidence was true) did compass the King’s death, and adhere to the King’s enemies, what are you to found your verdict upon? Upon your oaths; what are they to be founded upon? Upon the oath of the witness, and what is that founded upon? Upon this, and this only, that he does believe that there is an eternal God, an intelligent supreme existence, capable of inflicting eternal punishment for offences, or conferring eternal compensation upon man after he has passed the boundary of the grave. But where the witness believes he is possessed of a perishing soul, and that there is nothing upon which punishment or reward can be exerted, he proceeds regardless of the number of offences, and undisturbed by the terrors of exhausted fancy which might save you from fear that your verdict is founded upon perjury. I suppose he imagines that the body is actuated by some kind of animal machinery. I know not in what language to describe his notions. Suppose his opinion of the beautiful system framed by the Almighty hand to be, that it is all folly and blindness, compared to the manner in which he considers himself to have been created; or his abominable heart conceives its ideas; or his tongue communicated his notions. Suppose him, I say, to think so; what is perjury to him; He needs no creed, if he thinks his miserable body can take eternal refuge in the grave and the last puff of his nostrils can send his soul into annihilation. He laughs at the idea of eternal justice, and tells you that the grave, into which he sinks as a log, forms an entrenchment against the throne of God, and the vengeance of exasperated justice.

“Do not feel, my fellow-countrymen, a sort of anticipated consolation, in reflecting, that religion—which gave us comfort in our early days enabled us to sustain the stroke of affliction, and endeared us to one another—when we see our friends sinking into the earth, fills us with the expectation that we rise again; that we but sleep for a while, to wake forever? But what kind of communion can you hold, what interchange expect, what confidence place, in that abject slave, that condemned, despaired wretch, who acts under the idea that he is only the folly of a moment, that he cannot step beyond the threshold of the grave, that which is an object of terror to the best, and of hope to the confiding, is to him contempt, or despair?

“Bear with me, my countrymen; I feel my heart runs away with me,—the worst men can only be cool. What is the law of this country? If the witness does not believe in God, or a future state, you cannot swear



him. What swear him upon? Is it upon the book, or the leaf? You might as well swear him by a bramble or a coin. The ceremony of kissing is only the external symbol, by which man seals himself to the precept, and says, 'May God so help me, as I swear the truth.' He is then attached to the divinity, upon the condition of telling truth; and he expects mercy from heaven, as he performs his understanding. But the infidel,—By what can you catch his soul, or by what can you hold it? You repulse him from giving evidence; for he has no conscience, no hope to cheer him, no punishment to dread."—*Jno. P. Curran—Trial of Henry Sheares.*

## TWO WITNESSES IN TREASON

"It is laid down by Lord Coke, that two witnesses are necessary to convict (3rd Inst. 26) 'It seemeth that by ancient common law, one accuser or witness was not sufficient to convict any person by our books, and I remember no authority in our books to the contrary.' I know of no judicial determination in our books to the contrary of what Lord Coke here states: the common law is grounded upon the principles of reason. I consider the statutes of Edward VI, and William III, as statutes which had become necessary from the abuses occasioned by a departure from the common law. After the statute of Edward VI, expressly declaring the necessity of two witnesses, the Courts had fallen into, perhaps, a well intentioned departure from the meaning of the statute of Edward VI, so far that the place of two witnesses was supplied in evidence by anything that the Court thought a material additional circumstance in the case; and to the time of William III such a departure had prevailed, and this was thought sufficient to discharge everything respecting the obligations of the Statute. It became necessary, therefore, to enact, and that by enactment to do away with the abuse of the principle of the common law, by expressly declaring that no man should be indicted or convicted except by two witnesses to one overt act, or one witness to one act, and a second to another act of high treason of the same species. And there seems to me to be a sound distinction between the case of high treason, and of any other crime. It is the only crime which any subject is left to fear of punishment which he may feel, or to the dictates of his conscience to guard himself against transgressing the law; but treason is a breach of his oath of allegiance, and is so far like the case of perjury; and, therefore, in the case of treason no man should be convicted by the testimony of a single witness, because it amounts to no more than oath against oath; so that it is only reasonable there should be another to turn the scale; and, therefore, it is that I conceive Lord Coke well warranted in laying down this rule, a rule deduced from general justice, and even from the law of God himself. Gentlemen, what I am now stating, I offer to the Court as matter of law."

—*John P. Curran—Trial of Rev. Wm. Jackson.*

## DENUNCIATION OF A WITNESS

"And shall such a pitiful miscreant, after he has been worked upon by fear of death and the hope of compensation, be brought out to give evidence against his fellows? Shall the mild and wholesome councils of this government be held over catacombs of living death, where the wretch that is buried a man, lies till his heart has time to fester and dissolve, and is then dug up as a witness? Have you not seen him, after the resurrection from that region of death and corruption, make his appearance upon the table, the living image of life and of death, and the supreme arbiter of both? Have you not marked when he entered, how the stormy wave of the multitude retired at his approach? Have you not seen how the human heart bowed to the supremacy of his power, in the undissembled homage of deferential horror? How his glance, like



the lightning of heaven, seemed to rive the body of the accused, and mark it for the grave, while his voice warned the devoted wretch of woe and death—a death which no innocence can escape, no art elude, no force resist, no antidote prevent? There was an antidote—a juror's oath!—but even that adamant chain, that bound the integrity of man to the throne of eternal justice, is solved and molted in the breath that issues from the informer's mouth; conscience swings from her moorings, and the appalled and affrighted juror consults his own safety in the surrender of the victim!"

—*Jno. P. Curran—From Defense of Finnerty, for libel, 1797.*

### CURRAN'S GRATITUDE

"Allow me, gentlemen," said Curran, one evening to a large party, "to give you a sentiment. When a boy, I was one morning playing at marbles in the village of Ball-Alley, with a light heart, and a lighter pocket. The gibe and jest went gladly round, and when suddenly among us appeared a stranger, of a remarkable and very cheerful aspect; his intrusion was not the least restraint upon our merry little assemblage. He was a benevolent creature, and the days of infancy (after all, the happiest we shall ever see) perhaps rose upon his memory. Heaven bless him! I see his fine form at the distance of half a century, just as he stood before me, in the little Ball-Alley, in the day of my childhood. His name was Boyse; he was the rector of Newmarket. To me he took a particular fancy. I was winning and full of waggerý; thinking of everything that was eccentric, and by no means a miser of my eccentricities; everyone was welcome to a share of them, and I had plenty to spare, after having freighted the company. Some sweetmeats easily bribed me home with him. I learned from Boyse my alphabet, and my grammar and the rudiments of the classics. He taught me all he could, and then he sent me to a school at Middleton. In short, he made me a man. I recollect it was about thirty-five years afterwards, when I had risen to some eminence at the bar, and when I had a seat in Parliament, on my return one day from the court, I found an old gentleman seated alone in my drawing-room, his feet familiarly placed on each side of the Italian marble chimney-piece, and his whole air bespeaking the consciousness of one quite at home. He turned round—it was my friend of Ball-Alley. I rushed instinctively into his arms, and burst into tears. Words cannot describe the scene which followed. You are right, sir—you are right! The chimney-piece is yours—the pictures are yours—the house is yours! You gave me all I have—my friend—my benefactor! He dined with me, and in the evening I caught the tear glistening in his fine blue eye, when he saw poor little Jack, the creature of his bounty, rising in the House of Commons to reply to a right honorable. Poor Boyse! He is now gone; and no suitor has a larger deposit of practical benevolence in the Court above. This is his wine—let us drink to his memory."

—*John P. Curran—From Law and Lawyers, p. 28.*

### SAND AND WAVES OF THE SEA

"Where the public calamity generates imps like these, their number is as the sands of the sea, and the fury as insatiable as its waves."

—*Jno. P. Curran—From Hevy. v. Sirr, for false imprisonment.*

### GRIMACES OF A BABOON

"Protect me from the obscene and unnatural grimaces of a baboon."

—*Jno. P. Curran.*



## THE JUDGE IN CONSULTATION WITH A DOG

"I beg pardon; I thought you were in consultation."

—*Jno. P. Curran*—remark to the Judge, who was foundling a dog, while Curran was arguing a case before him.

## DIGNITY

"The essence of dignity consists much more in rest than in action."

—*Jno. P. Curran*—from letter to Duke of Essex.

## TRUTH AND ERROR

"Truth is to be sought only by slow and painful progress. Error, in its nature, is flippant and compendious; it hops with airy and fastidious levity, over proofs and arguments, and perches upon assertion which it calls conclusion."

—*John P. Curran, In case of Alderman Howison Before Lord Clare, 1790.*

## DENUNCIATION OF THE PERJURER, O'BRIEN

"Do you not see him coiling himself in the scaly circles of his perjury, making anticipated battle against the attack that he knew would be made, and spitting his venom against the man that might have given evidence of the infamous character, if he dared appear?"—*Jno. P. Curran.*

## OUTBURST TO A JURY

"Did they suppose they were addressing the liquorish loyalty of a guzzling corporation?"—*Jno. P. Curran*—in defense of Dr. Drennan, 1794.

## LOVE

"Love is a noble and generous passion; it can be founded on a pure and ardent friendship, on an exalted respect, on an implicit confidence in its object."—*Curran*—from *Massy v. Headfort*.

## AN INDEPENDENT BAR

"The independence of the bar is the only unfailing safeguard of justice, and of that liberty without which justice is but a name."

—*Curran*—Reply to a Catholic Board.

Curran studied and practiced oratory daily, reading and speaking alone aloud and slowly. Regarded Antony's oration over Caesar's dead body, the most perfect specimen of oratory; admired the classics and the Bible; chose as his favorite authors,—Stearne, Junius's Letters, and Thompson's Seasons; was fond of historical studies, and sympathized with the American Revolution; and was, like O'Connell, an ardent reader of novels all his life, Byron said: "I have heard him speak more poetry than I have ever seen written."—*The Author.*

## A MINION OF AUTHORITY

"But to what end, my lords, offer arguments to such men? A little and a peevish mind may be exasperated, but how shall it be corrected by refutation? How fruitless would it have been to represent to that wretched chancellor, that he was betraying those rights which he was sworn to maintain, that he was involving a government in disgrace, and a king-



dom in a panic and consternation; that he was violating every sacred duty, and every solemn engagement that bound him to himself, and his country, his sovereign, and his God! Alas, my lords, by what argument could any man hope to reclaim or to dissuade a mean, illiberal, and unprincipled minion of authority, induced by his profligacy to undertake, and bound by his avarice and vanity to persevere? He would probably have replied to the most unanswerable arguments, by some curt, contumelious, and unmeaning apothegm, delivered with the fretful smile of irritated self-sufficiency, and disconcerted arrogance, or even, if he could be dragged by his fears to a consideration of the question, by what miracle could the pigmy capacity of a stunted pedant be enlarged to a reception of the subject? The endeavor to approach it would have only removed him to a greater distance than he was before, as a little hand that strives to grasp a mighty globe, is thrown back by the re-action of its own effort to comprehend. It may be given to an Hale, or an Hardwicke, to discern and retract a mistake; the errors of such men are only the specks that arise for a moment upon the surface of a splendid luminary; consumed by its heat, or irradiated by its light, they soon purge and disappear; but the perverseness of a mean and narrow interest, are like the excrescences that grow upon a body naturally cold and dark, no fire to waste them, and no ray to enlighten, they assimilate and coalesce an incorrigible permanency in the union with kindred frost and kindred opacity. Nor, indeed, my lords, except where the interest of millions can be affected by the folly of the vice of an individual, need it be much regretted, that to the things not worthy of being made better, it hath not pleased Providence to afford the privilege of improvement."

—*From speech on the night of election of Lord Mayor of the City of Dublin, 1790. Lord Clare, was the Lord Chancellor, between whom and Curran there existed an unextinguishable animosity.*

"Eternal vigilance is the price of liberty."—*Curran from Speech 1808.*

#### IF FLEAS HAD BEEN UNANIMOUS

"If the fleas had been unanimous, and all pulled one way, they must have pulled me out of bed entirely."

—*Curran to his Landlady having been annoyed by fleas.*

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#### COMMON LAW OF HUSBAND AND WIFE

"The whole theory of the common law is a slavish one, compared even with the civil law. The merging of the wife's name in that of her husband is emblematic of the fate of all her legal rights. The torch of Hymen serves but to light the pile on which those rights are offered up."

—*Justice Nicholas Emery of Maine, 106 Me. Rep., State v. Burlingham, 15 (1838- ).*



## BENJ. R. CURTIS (1809-1974), Massachusetts

### THE TRIAL JUDGE

"It has seemed to me that a far more difficult and useful field of labor, speaking generally, is the safe, prompt, judicious and wise controlling power of a Judge of the Circuit. I have no doubt that every quality and attainment of which a Judge is capable, may there find fullest exercise and their most difficult work. I presume you will agree with me, that there is no field for a lawyer, which, for breadth and compass and the requisition made on all the faculties, can compare with a trial by jury; and I believe it is as true of a judge as of a lawyer, that in their actual application of the law to the business of men, mingled as it is with all passions, and motives and diversities of mind, temper, and condition, in the course of a trial by jury, what is most excellent in him comes out, and finds its fitting work, and whatever faults and weaknesses he has are sensibly felt."

—*Benj. R. Curtis, in a letter to Dan'l Webster, written a month after he had been engaged in Circuit Court Work.*

### CODIFYING THE COMMON LAW

"The legislature imagines that the whole body of the law may now be reduced to a pocket volume, so that any man may carry about his own lawyer. It does not occur to them that a good system of law must be at the same time so extensive as to apply to govern all the existing relations between men in society; so stable and fixed, in all important principles, as to furnish a *certain* guide; and so flexible as to be capable of adaptation to the ever-changing forms into which property is thrown by the wearied enterprise all-sharing love of gain which distinguish our people."—*Benjamin R. Curtis—Letter to George Ticknor, 1836.*

### A LAWYER'S BUSINESS

"A lawyer can no more regulate the amount of business he will do than an engineer can blow a barrel of gunpowder half-way down."

—*Letter to his uncle—George Ticknor, 1837.*

### DISSENTING OPINION IN DRED SCOTT CASE

"I dissent, from the opinion pronounced by the Chief Justice (Roger B. Taney). \* \* \* The question is, whether any person of African descent whose ancestors were sold as slaves in the United States, can be a citizen of the United States. \* \* \* One mode of approaching this question is to inquire who were citizens of the United States, at the time of the adoption of the Constitution. Citizens of the United States at the time of the adoption of the Constitution can have been no other than citizens of the United States, under the Confederation. \* \* \* It may safely be said that the citizens of the several States were citizens of the United States, under the Confederation. \* \* \* To determine whether any free persons descended from Africans held in slavery were citizens of the United States, under the Confederation, and consequently at the time of the adoption of the Constitution of the United States, it is only necessary to know whether any such persons were citizens of the States under the Confederation, at the time of the adoption of the Constitution.

"Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, all free native-born inhabitants of the State of



New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, though descended from African slaves, but such of them as had the other necessary qualifications possessed the franchise of electors, on equal terms with other citizens. \* \* I shall not enter into an examination of the existing opinions of that period respecting the African race, nor into any discussion concerning the meaning of those who asserted in the Declaration of Independence that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. My own opinion is that a calm comparison of these assertions of universal abstract truths and of their own individual opinions and acts, would not leave these men under any reproach of inconsistency; that the great truths they asserted on that solemn occasion they were ready and anxious to make effectual whenever a necessary regard to circumstances, which no statesman can disregard without producing more evil than good, would allow; and that it would not be just to them, nor true in itself, to allege that they intended to say the Creator of all men had endowed the white race exclusively with the great natural rights which the Declaration asserts. But this is not the place to vindicate their memory. As I conceive, we should deal here, with those substantial facts evinced by the written Constitutions of States, and by notorious practice under them. And they show, in a manner which no argument can obscure, that in some of the original thirteen States free colored persons, before and at the time of the foundation of the Constitution, were citizens of those States. Therefore, my opinion is that under the Constitution of the United States, every free person born on the soil of a State, who is a citizen of that State by force of its Constitution or laws, is also a citizen of the United States.

"Eight distinct instances (of prohibiting slavery in the territories), beginning with the first Congress, and coming down to the year 1848, in which Congress has excluded slavery from the territory of the United States; and six distinct instances in which Congress organized and continued, beginning also with the first Congress and coming down to 1822. These acts were severally signed by seven Presidents of the United States, beginning with General Washington and coming regularly down as far as John Quincy Adams, thus including all who were in public life when the Constitution was adopted.

"In the practical construction of the Constitution, contemporaneously with its going into effect, by men intimately acquainted with its history from their personal participation in framing and adopting it, and continued by them through a long series of acts of the gravest importance, be entitled to weight in the judicial mind on a question of construction, it would seem to be difficult to resist the force of the acts above adverted to.

"Slavery being contrary to natural right, is created only by municipal law. Then is it conceivable that the Constitution has conferred the right on every citizen to become a resident on the territory of the United States, with his slaves, and there to hold them as such, but has neither made nor provided for any municipal regulations which are essential to the existence of slavery? \* \* \* Whatever theoretical importance may be now supposed to belong to the maintenance of such a right, I feel a perfect conviction that it would, if ever tried, prove to be as impracticable, in fact, as it is, in my judgment, monstrous in theory." Judge Curtis arrived at the conclusion that the acts of Congress which had prohibited slavery in the territories, including the Missouri Compromise, "were constitutional and valid laws."

### JUDGESHIP EASIER THAN PRACTICING LAW

"The great difference between my professional labors at the bar and on the bench, consists in the entire freedom of the latter from anxiety



and burdensome responsibility, and the certainty when I rise in the morning that no one can force me to do anything which I am not equal to."

### THE COMMON PEOPLE

"I find nothing to rely on for our future security and peace but the honest instincts of the mass of the people. In them I would include those of education and ability—those elevated above the average intelligence of the country, *provided* they are not politicians, or members of the third estate; but I firmly believe that if the country for five years were to be effectively governed by politicians and editors, helped by speculative men of education and talent, it would be ruined beyond hope of redemption."

### ANDREW JOHNSON

"Johnson is a man of few ideas, but they are right and true, and he could suffer death sooner than yield up or violate one of them. He is honest, right-minded, and narrow-minded; he has no tact and even lacks discretion and foresight."

—*From 'Woodbury's Life of Thaddeus Stevens,' 230.*

### WILL IS POWER

"Will and not knowledge is power."

### GREAT MEN AND DEEDS

"The illustrious names and great deeds which centuries have gathered are the richest treasures of a nation. The masterpieces of literature and art, dignify the pursuits in which they were produced."

—*From Remarks on the Death of Daniel Webster, 1852.*

### EXECUTIVE POWER

"This power is certainly not found in any express grant of power made by the Constitution to the President, not even in any delegation of power made by the Constitution of the United States to any department of the government. It is claimed to be found solely in the fact that he is the Commander-in-chief of the Army and Navy, charged with the duty of subduing the enemy. And to this end, as he understands it, he is charged with the duty of subduing the enemy. And to this end, as he understnads it, he is charged with the duty of using, not only these great and ample powers which the Constitution and laws, and the self devotion of the people executing them, have placed in his hands, but charged with the duty of using powers which the people have reserved to the States, or themselves; and is permitted to break down those great constitutional safeguards of the partition of governmental powers, and the immunity of the citizen from mere executive control, which are at once the end and the means of free government. The necessary result of this interpretation of the Constitution is that, in time of war, the President has any and all power which he may deem it necessary to exercise to subdue the enemy; and that every private and personal right of individual security against executive control, and every right reserved to the States or the people, rests merely upon executive discretion. But the military power of the President is derived from the Constitution; and it is as sufficiently defined there as is his purely civil power. These are the words:—'The President shall be the Commander-in-chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States.' This is his military power.



He is the general-in-chief; and as such, in prosecuting war, may do what generals in the field are allowed to do within the sphere of their actual operations, in subordination to the laws of their country, from which alone they derive their authority.

“When the Constitution says that the President shall be Commander-in-chief of the Army and Navy of the United States, and the militia of the several States when called into the actual service of the United States, does not mean that he shall possess military power and command over all citizens as if enlisted in the Army or Navy or in the militia called into the actual service of the United States. Does it mean that he may make himself a legislator, and enact penal laws governing the citizens of the United States, and erect tribunals and create offices to enforce his penal edicts upon citizens? Does it mean that he may, by a prospective executive decree, repeal and annul the laws of the several States, which respect subjects reserved by the Constitution for the Executive action of the States and the people? The President is the commander-in-chief of the Army and Navy, not only by force of the Constitution, but under and subject to the Constitution, and to every law enacted by its authority, as completely and clearly as the private in the ranks.”—*In an article in 1862.*

In the above Judge Curtis argued that President Lincoln's Proclamation of Emancipation was unconstitutional, because reserved to the States. Lincoln claimed the right because he was Commander-in-Chief of the Army and Navy to take any measure which might best subdue the enemy.—*The Author.*

Benj. R. Curtis was an Associate Justice of the United States Supreme Court (1851-1857), resigning, at age of 48, he returned to the practice. He had great distinction, and as great opportunities for an unlimited practice of the highest grade, as any man ever had in this country, and for 17 years maintained his place. His brother estimated that his total earnings for this period was \$650,000—an average of about \$38,000 a year, and this in miscellaneous practice.

Of his “Opinion-Books,” (2 folio volumes, of nearly 1,000 closely written pages), George Ticknor writes:—“Probably there is no similar record extant, concerning such a variety of subjects arising in the practice of an American lawyer, in which so extensive a field of jurisprudence has been covered by such careful and thorough discussions, uniformly based upon an exact statement of the case that was to be considered.”

Judge Sam'l F. Miller used to remark that he never knew of a lawyer or anyone else, who had such powers of condensation as had Judge Curtis. He could say more in a few words than any man at the American Bar.

Ben Butler, who was for the prosecution in the Andrew Johnson impeachment, and Judge Curtis was leading counsel for the defense, said: “After Judge Curtis had presented the case of his client, nothing *more* was said in his behalf, although in the five or six closing speeches of his other counsel, much *else* was said.”

Daniel Webster thought he had laid the people of the nation under everlasting obligations to him, when he induced his appointment, and said he possessed the requisites of great power at the bar—clearness, fullness and force.

Charles Francis Adams pronounced him “the most consummate master of forensic style among American lawyers of recent time.”—*The Author.*

## POWER OF JUDGES NOT TO BE FEARED

“As long as the judges of the United States are obliged to express their opinions publicly, to give their reason for them when called upon in the usual mode, and to stand responsible for them, not only to public opinion but to a court of impeachment, I can apprehend very little danger of the laws being wrested to purposes of injustice. But on the



other hand, I do consider that this power and corresponding duty of the court, authoritatively to declare the law, is one of the highest safeguards of the citizen. The sole end of courts of justice is to enforce the laws uniformly and impartially, without respect of persons or times, or the opinions of men. To enforce popular laws is easy. But when an unpopular cause is a just cause, when a law, unpopular in some locality, is to be enforced there, then comes the strain upon the administration of justice; and few unprejudiced men would hesitate as to where that strain would be most firmly borne."

—*Benj. R. Curtis, in Deciding U. S. vs. Morris, U. S. Circuit Court, 1851.*

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#### WEBSTER'S REPLY TO HAYNE

"The eulogium pronounced by the honorable gentleman on the character of the State of South Carolina, for her Revolutionary and other merits, meets my hearty concurrence. I shall not acknowledge that the honorable member goes before me in regard for whatever of distinguished talent, or distinguished character, South Carolina has produced. I claim part of the honor; I partake in the pride of her great names. I claim them for countrymen, one and all, the Laurenses, the Rutledges, the Pinckneys, the Sumters, the Marions—Americans all, whose fame is no more to be hemmed in by State lines than their talents and patriotism were capable of being circumscribed within the same narrow limits. In their day and generation they served and honored the country, and the whole country; and their renown is of the treasures of the whole country. Him whose honored name the gentleman himself bears does he esteem me less capable of gratitude for his patriotism, or sympathy for his sufferings, than if his eyes had first opened upon the light of Massachusetts instead of South Carolina? Sir, does he suppose it in his power to exhibit a Carolina name so bright as to produce envy in my bosom? No, sir, increased gratification and delight, rather. I thank God that, if I am gifted with little of the spirit which is able to raise mortals to the skies, I have yet none, as I trust, of that other spirit which would drag angels down. When I shall be found, sir, in my place here in the Senate, or elsewhere, to sneer at public merit, because it happens to spring up beyond the little limits of my own state or neighborhood; when I refuse, for any such cause or for any cause, the homage of American talent, to elevated patriotism, to sincere devotion to liberty and the country; or, if I see an uncommon endowment of heaven, if I see extraordinary capacity and virtue in any son of the South, and if, moved by local prejudice or gangrened by State jealousy, I get up here to abate the tithe of a hair from his just character and just fame, may my tongue cleave to the roof of my mouth."



## GEORGE TICKNOR CURTIS (1812-1894), Massachusetts

### JEREMIAH MASON

“Among the leading members of the Portsmouth bar whom Mr. Webster met there on the circuit was that extraordinary man, Jeremiah Mason, who was by fourteen years Mr. Webster’s senior, and who was the admitted head of the legal profession in New Hampshire, when Mr. Webster went to Portsmouth, (in 1805) as he was also one of the greatest lawyers that New England has ever produced. Since it was my fortune to have known both of these very eminent persons, to have heard them repeatedly at the bar and to have conversed with each of them respecting the other, I may, before quoting what Mr. Webster has written concerning Mr. Mason, express my sense of its entire justice. When Mr. Mason dealt with principles of the law, he handled them with such simplicity, and made them so lucid, and fitted them so exactly to his case that one could scarcely avoid believing that if on that particular occasion he was wrong, the law itself had always been wrong. \* \* \* Mr. Webster, with whom he never had a moment’s personal difference, made a record in his Autobiography, which he was well aware would remain private while either of them lived, but which he intended should stand as his deliberate judgment. It was written nearly twenty years before Mr. Mason’s death; but it was well known that Mr. Webster never changed his estimate which he then carefully placed on record, as follows:

“‘If there be in the country a stronger intellect, if there be a mind of more native resources, if there be a vision which sees quicker or sees deeper into whatever is intricate, or whatsoever is profound, I must confess I have not known it. I look to that individual, who if it belong to anybody, is entitled to be an exception. (Chief Justice Marshall is here meant.) But I deliberately let the judgment stand. That that individual has much more habit of regular composition, that he has been disciplined and exercised in a vastly superior school, that he possesses even a faculty of illustration more various and more easy I think may be admitted. That the original reach of his mind is greater, that its grasp is stronger, that its logic is closer, I do not allow.’”

Geo. T. Curtis was a brother of Benjamin R. and wrote the best Life of Daniel Webster, also a Life of James Buchanan, and a Constitutional History of the U. S. (completed in 1896).—*The Author.*

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### THE BIBLE

JOSIAH QUINCY: “The great comprehensive truth, written in letters of living light on every page of our history, are these: Human happiness has no perfect security but freedom; freedom, none but virtue; virtue, none but knowledge; and neither freedom nor virtue has any vigor or immortal hope except in the principles of the Christian faith and in the sanctions of the Christian religion.”

BURKE: “True religion is the foundation of society, the basis on which all true government rests, and from which power derives its authority, laws their efficacy, and both their sanction. If it is once shaken by contempt, the whole fabric cannot be stable or lasting.”



## CALEB CUSHING (1800-1879), Massachusetts

### FORECAST OF WHIG DISSOLUTION

"I pray to God, if in the decree of His Providence He have any mercy in store for me, not to suffer me to behold the hour of its dissolution; its glory extinct; the banner of its pride rent and trampled in the dust; its nationality a moral of history; its grandeur a lustrous vision of the morning slumber vanished; its liberty a disembodied spirit, brooding like the genius of the Past amid the prostrate monuments of the old magnificence. To him that shall compass or plot the dissolution of this Union, I would apply language resembling what I remember to have seen of an old anathema: Wherever fire burns or water runs; wherever ship floats or land is tilled; wherever the skies vault themselves, or the lark carols to the dawn, or sun shines, or earth greens in his ray; wherever God is worshipped in temples or heard in thunder; wherever man is honored or woman loved—there, from thenceforth, and forever, shall there be to him no part or lot in the honor of man, or the love of woman. Ixion's revolving wheel, the over-mantling cup at which Tantalus may not slake his unquenchable thirst, the insatiate vulture gnawing at the immortal heart of Prometheus; the rebel giants writhing in the volcanic fires of Aetna—are faint types of his doom."

—*From speech in House of Representatives, in 1836, while Cushing was a Whig: Forney's Anecdotes, etc., 230.*

### HIS VERSATILITY

"I have heard him (Cushing) at a dinner-table conversing in French, Spanish, English, and German."—*Forney—in his 'Anecdotes,' 229.*

### SOME OF HIS ACCOMPLISHMENTS

"As a newspaper writer he is unsurpassed. \* \* \* He was at home on finance, on law, and especially on foreign questions. In society, he is delightful—excelling in conversation, his reminiscences are original and graphic. A man of large wealth, inherited and self-earned, a widower without children, fond of labor, of matchless excellence as a practitioner in the Supreme Court of the U. S. He is also a great student—devouring every book as it comes out, novels inclusive, and remembering everything he reads. His health is good, his activity remarkable, his habits temperate. Invited everywhere in Washington, he is the ornament of every circle, and it is not going too far to say that gracious, polite, and agreeable to all educated Englishmen are—especially those reared in high life—among his ancestors in the Geneva mission. (He was one of three chosen by President Grant as counsel in the Geneva Arbitration, —Cushing, Evarts and Waite), he will be one of the most popular."

—*1 Forney's 'Anecdotes,' 229.*

### NOMINATED CHIEF JUSTICE, 1873

"He was nominated by President Grant for Chief Justice of the United States Supreme Court, upon the death of S. P. Chase, but was not confirmed, because Cushing had been liberal in politics, a friend of Franklin Pierce and Jefferson Davis."—*2 Forney's 'Anecdotes,' 228.*



## INCOME IN 1873

"It is said that Mr. Cushing is now (1873) receiving more money for legal services than any man in his profession."—1 *Forney's Anecdotes*, 21.

## EARLY READING

"When a young lawyer in Newburyport, Mass., Cushing made an arrangement with the leading bookseller of the place to take all his new books at 9 o'clock in the evening and return them at 8 o'clock the next morning. In that time usually devoted to rest, he would gain a clear idea of their contents, and his wonderful memory always retained what he had once read."—*April, 1892, Green Bag*, 24.

## READ MASSACHUSETTS SUPREME COURT REPORTS IN 19 DAYS

"In 1852, he was appointed a Justice of the Supreme Court of Massachusetts. To prepare himself he read in nineteen days the 57 volumes of the Mass. Reports—all that were out at that time."

—*January, 1892, Green Bag*, 3.

## A MODEL OPINION

As a model of what an opinion may be in soundness of law, and clearness and grace of expression, see *Popkin, et al. v. Sargent, et al.*, 10 Cush., 327.

## OFFICE HELD

Born in 1800, a Harvard graduate of 1817; member of Congress, 1835-1843; U. S. Commissioner to China, 1843-5; Judge of Massachusetts Supreme Court, 1852; Attorney-General of the United States, 1853-1857, U. S. Minister to Spain, 1874-7.

## GREAT LINGUIST

"He spoke French, Spanish and other modern languages, and was said to be able to converse with all foreign ministers at Washington in their own tongue. It is said that even in China, he translated his official business without the aid of an interpreter. Hugh McCulloch, Secretary of the Treasury, under Lincoln, Johnson, and Arthur, in his very interesting volume—'Men and Measures of Half a Century,' in giving his impression of Edward Everett, says: 'He (Everett) was, perhaps, the finest scholar in the classics of the day, the greatest linguist that ever went to Congress, except Caleb Cushing. It was said of Mr. Cushing that he could translate the European languages. While in Congress, there came to the State Department a document that no one could interpret. Upon the suggestion of some one who had heard of Mr. Cushing's reputation as a linguist, it was sent to him. He translated it without difficulty. Mr. Cushing was an effective and ready speaker, and a very able and learned lawyer. He was one of the few men whose voice could be heard in the old House of Representatives, and who never spoke without commanding the attention of the members.'"

—*January, 1892, Green Bag*, 10.

## HIS INDUSTRY

"Thomas H. Benton once said that he thought himself the most industrious man he had ever known in public life with the exception of John Quincy Adams. Yet, neither of these men was more industrious than Caleb Cushing. 'His house in Newburyport was never passed by



me at night, when he was at home, be it ever so late,' says William C. Todd, 'that I did not see a light in his room; and it was known to be his habit to work until after midnight, then throw himself on a lounge for a few hours' rest, and at daylight resume his labor.' He sought knowledge from every source and was an omniverous reader. When Webster's Unabridged Dictionary first appeared, he read it all through, word by word, and corrected its mistakes."—*Jan., 1892, Green Bag, 10.*

### GREAT INTELLECTUAL LAWYER

"Caleb Cushing was the ablest international lawyer of this country, and he had the reputation in Europe of being the ablest in any country."  
—*Benj. F. Butler—in 'His Book,' 318.*

### U. S. ATTORNEY-GENERAL UNDER PIERCE.

"He was appropriately selected for attorney-general by President Pierce, in 1853. In conjunction with Jefferson Davis, he was considered to be the guiding and controlling force in the administration. His thorough education, his remarkable attainments, his eminence in the law, his ability as an advocate, rendered his active co-operation of great value to the pro-slavery Democrats of the South."  
—*1 Blaine's 20 Years of Congress, 159.*

### PRESIDENT PIERCE'S ESTIMATE

"President Pierce told his most intimate friend, Nathaniel Hawthorne (years after Cushing's espousal of John Tyler's administration) that Caleb Cushing had such mental variety and activity that he could not, if left to himself, keep hold of one view of things, but needed the influence of a more stable judgment to keep him from divergency. His fickleness was intellectual, not moral."—*2 Perley's Rem., 276.*

### KNOWLEDGE,—VAST AND VARIOUS

"His knowledge was vast and various, and his style, tempered by foreign travel, was classical. He had mastered history, politics, law, jurisprudence, moral science, and almost every other branch of knowledge, which enabled him to display an erudition as marvelous in amount as it was varied in kind."—*2 Perley's Rem., 277.*

### SIDNEY WILLARD'S OPINION

Sidney Willard, Professor of Latin, Hebrew and other oriental languages for nearly twenty-five years, said that Caleb Cushing and Albert H. Nelson were men of the best natural ability that he had ever had among all his pupils at college.

—*Willard's 'Half a Century with Judges and Lawyers,' 69.*

### THOS. H. BENTON ON CUSHING

"Of all these (members of Pierce's cabinet) the attorney-general (Cushing) is the master spirit. He is a man of talent, of learning, of industry—unscrupulous, double-sexed, double-gendered, and hermaphroditic, in politics, with hinges in his knee, which he often crooks, that thrift may follow fawning. He governs his subserviency; and to him is deferred the mater's place in Mr. Pierce's cabinet. When I heard that he was to come into the cabinet I set down Mr. Pierce for a doomed man, and foresaw the swift and dull destruction which was to fall upon him."

—*1 Rhodes' History of the U. S., 397.*



## JAMES FORD RHODES' ESTIMATE

"Cushing was one of those men who seem to have taken all knowledge for their province. Scholar, author, lawyer, statesman, diplomatist, general, judge, in at least four of these callings he achieved distinction. \* \* \* He was one of the most indefatigable workers. While well versed in the modern languages, he could also speak fluently several modern languages, and it was noted that at diplomatic dinners, while the Secretary of State (Wm. L. Marcy) could converse only in his own tongue, the Attorney-General carried on conversation with all the ambassadors in their proper languages. Thoroughly acquainted with the best English literature, he yet read every book, and remembered what he read."

—1 *Rhodes' History of the U. S.*, 391-2.

## JAMES SCHOULER ON CUSHING

"The third selection for Chief Justice by President Grant (after Roscoe Conkling, of New York and George H. Williams, of Oregon) was stranger still in point of actual fitness—that of Caleb Cushing. Of professional skill, intellect, learning and experience, Cushing had abundance, but both politically and for the weight of years, he belonged to the past. And more immediately in his disfavor was a serious doubt broadcast of his probity and moral principle, for Washington knew him intimately as a resident. Grant was saved another rebuff from the Senate, by the production to that body of a letter, the versatile Cushing had written to his 'dear friend' Jefferson Davis, in March 1861, asking a personal favor; and with that letter assigned, as a sufficient basis of objection Republican Senators asked the President to withdraw the nomination, which he did at once."—7 *Schouler's U. S. Hist.*, 230-1.

Schouler further says:—

"A man of untiring industry and brilliant accomplishments of a versatile character, as lawyer, legislator, diplomatist and occasional writer, and moreover, as one of the very few officers from New England who ever led volunteer soldiers to the Mexican War—Cushing had figured for nearly half a century in the public gaze, in one capacity or another, and did much excellent service. But he skirted on the edge of parties and was throughout more the counsellor of statesmen than a statesman himself; his convictions went largely by his retainers; and in the course of a long life he made more political enemies than friends and kept scarcely an intimacy."—7 *Schouler's U. S. Hist.*, 276.

## THE UNITED STATES SUPREME COURT

"Yours is not the gauntleted hand of the soldier, nor yours the voice which commands armies, rules cabinets, or leads senates; but though you are none of these, yet you are backed by all of them. Theirs is the external power which sustains your moral authority; you are the incarnate mind of the political body of the nation. In the complex institutions of our country you are the pivot point upon which the rights and liberties of all, government and people alike turn; or, rather, you are the central light of constitutional wisdom around which they perpetually revolve. Long may this Court retain the confidence of our country as the greatest conservators, not of the private peace only, but of the sanctity and integrity of the Constitution."

—Remarks by Cushing, upon retiring as Attorney-General of the U. S., March 4, 1857: 2 *Nicolay and Hays' Lincoln*, 70 (Also *'National Intelligencer*, March 5, 1857).



## MATT H. CARPENTER

"I do love to watch the entry of that man into court; he comes in with such a sunshiny smile, such a boyish indifference of step, and such a roguish twinkle of the eyes, as seems to say, 'Now listen while I have some sport with these old codgers'."—*Caleb Cushing*.

## HUGH McCULLOCH ON CUSHING

"Mr. Edward Everett was perhaps the finest classical scholar of his day, the greatest linguist that ever sat in Congress, except Caleb Cushing. It was said of Mr. Cushing that he could translate all the European languages; that while in Congress there came to the State Department a document that no one in that department could interpret. Upon the suggestion of some one who had heard of Mr. Cushing's reputation as a linguist, it was sent to him, and he translated it without difficulty." Mr Cushing was a ready and effective speaker, and a very able and learned lawyer. He was one of the few men, whose voice could be heard in the chamber of the old House of Representatives, and who never spoke without commanding the attention of the members. He lacked only one thing the possession of which would have made him one of the most distinguished men of his time."

—*McCulloch's "Men and Measures," 24.*

## ATTORNEYS CREATED OUT OF NOTHING

"We do not impeach the omnipotence of the Legislature for creating attorneys, as the world was created, out of nothing; or the power to control such eccentric orbs within their appropriate spheres. Our province is rather to ascertain their orbits, and to harmonize their motions, if possible, with the movements of other bodies."

—*Judge Jonas Cutting of Maine, in Simmons v. Jacobs, 52 Maine, 156 (1862).*

## THE BIBLE

SELDEN: "I have taken much pains to know everything that is esteemed worth knowing amongst men; but with all my reading, nothing now remains to comfort me at the close of this life but this passage of St. Paul: 'It is a faithful saying, and worthy of all acceptation, that Jesus Christ came into the world to save sinners.' To this I cleave, and herein do I find rest."

P. HENRY: "I have now disposed of all my property to my family. There is one thing more I wish I could give them, and that is the Christian religion. If they had that, and I had not given them one shilling, they would have been rich, and if they had not that, and I had given them all the world, they would be poor."



## RICHARD HENRY DANA, Jr., (1815-1882), Massachusetts

### LIABILITIES OF NEUTRALS TO A BLOCKADE

"The government is carrying on a war. It is exerting all the powers of war. Yet the claimants of the captured vessels not only seek to save their vessels by denying that they are liable to capture, but deny the right of the government to exercise war powers—deny that this can be, in point of law, a war. So the Judiciary is actually, after the war of twenty-three months' duration, to decide whether the government has the legal capacity to exert these war powers. \* \* \* Contemplate, my dear sir, the possibility of the Supreme Court deciding that this blockade is illegal! What a position it would put us in before the world, whose commerce we have been illegally prohibiting, whom we have unlawfully subjected to a cotton famine, and domestic dangers and distress for two years! It would end the war, and where it would leave us with neutral powers, it is fearful to contemplate! Yet such an event is legally possible—I do not think it probable, hardly possible, in fact. But last year I think there was danger of such a result when the blockade was new, and before the three judges were appointed."

—*Richard Henry Dana, Jr., in the Prize Cases, 2 Black, 635, 1865.*

Mr. Dana was educated at Harvard. To cure himself of eye trouble, he shipped as a common sailor to the Pacific Coast, and later published an account of the same in "Two Years Before the Mast." (1840).

### DANA ON CHOATE'S FERTILITY

Mr. Dana, in replying to Choate, truly said, in the Dalton divorce Case, alluding to Colburn (a witness whom Choate denounced), that the victim who had been smitten by the bolt of Choate's denunciation was lost; he might go to the East or to the West, in his endeavors to reform, but that tremendous invective would always blacken before him, and his reputation would track him with the fatal footsteps of Nemesis."

—*Parker's "Reminiscences", of R. Choate, 478-9.*

### REMARKS UPON THE DEATH OF RUFUS CHOATE

"The 'golden bowl is broken,' the age of miracles has passed, the day of inspiration is over; the great conquerer, unseen and irresistible, has broken into our temple, and has carried off the vessels of gold, the vessels of silver, the precious stones, the jewels, and the ivory; and like the priests at the temple of Jerusalem, after the invasion from Babylon, we must content ourselves with serving vessels of wood, and stone, and of iron."

—*Mr. Dana's Remarks before members of the Suffolk Bar, Boston, upon Mr. Choate's Death.*

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### A BAD LAW

"The best way to get a bad law repealed is to enforce it strictly."

—*Lincoln.*



## JOHN W. DANIEL (1842-1910), Virginia

### WASHINGTON

"Alone in its grandeur stands forth the character of Washington in history; alone like some peak that has no fellow in the mountain range of greatness. Borne upon the bosom of that river which mirrors Capitol dome, and monumental shaft in its seaward flow, the river itself seems to reverse its current and bear us silently into the past. Scarce has the vista of the city faded from our gaze when we behold on the woodland height that swells above the waters, amidst walks and groves and gardens, the white porch of the old colonial plantation home which has become the shrine of many a pilgrimage. \* \* \* We stand under the great trees and watch the solemn river, in its never ceasing flow, we gaze upon the simple tomb silence is unbroken save by the low murmur of the waters, or the wild bird's note, and we are enveloped in an atmosphere of moral grandeur which no pageantry of moving men nor splendid pile can generate. Nightly on the plain of Marathon the Greeks have the tradition, that there yet may be heard the neighing of charges and the rushing shadows of spectral war. In the spell that broods over the sacred groves of Vernon, Patriotism, Honor, Courage, Justice, Virtue, Truth, seem bodied forth—the only imperishable realities of man's being. \* \* \*

"Fascinated by the perfection of the man, we are loath to break the mirror of admiration into the judgment of analysis. But, lo, as we attempt it, every fragment becomes the miniature of such sublimity and beauty, that the destroying hand can only multiply the forms of immortality. \* \* \*

"Brilliant I will not call Washington, if the brightness of the rippling river exceed the solemn glory of old ocean. Brilliant I will not call him, if darkness must be visible in order to display light; but he had none of that rocket-like brilliancy which flames in instant corruscation across the black brow of night, and then is not. But if a steady, unflickering flame, slow rising to its lofty sphere, high hung in the Heavens of contemplation, dispensing far and wide its rays, revealing all things on which it shines in due proportions and large relations, making Right, Duty and Destiny so plain that in the vision we are scarce conscious of the light, if this be brilliancy, then the genius of Washington was as full-orbed and luminous as the god of day in his zenith."—*Dedication Oration of Washington Nat'l Monument, Feb. 21, 1885.*

### GEORGE F. HOAR ON DANIEL

"John W. Daniel had been known as a very eminent lawyer at the Virginia Bar, author of two excellent law books. I had great respect for his intellectual qualities."—2 *Hoar's 'Autobiography of 70 years,' 184.*

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### CROSS-EXAMINATION

"A lawyer should never ask a witness on cross-examination a question unless in the first place he knew what the answer should be, or in the second place he didn't care."—*David Graham, N. Y. (1808-1852).*



## CLARENCE DARROW, Illinois

### THE CHRISTIAN NOT THE ONLY RELIGION

"Now, gentlemen, like Brother Hawley and Brother Richardson and Senator Borah, I, too, have a profound regard for religion. Mine may be the broader. I don't want to say to these twelve men that I think the Christian religion is the only religion that the world has ever known. I don't believe it for a moment. I have the greatest respect for any religion or any code of ethics that does anything to help man, whatever that religion may be. And for the black man who looks into the black face of a wooden idol and prays to that idol to make him a better man, I have the profoundest respect. I know that there is in him, when he addresses his prayers to his wooden idol, the same holy sentiment and the same feeling that there is in the breast of a Christian when he raises his prayer to the Christian's God. It is all a piece of ethics and a higher life, and no man could have more respect for it than I have. In the ways of the world and in the language of the world I am not a professed Christian. I do not pretend to be. I have my doubts about things which to other men's minds seem plain. I look out on the great universe around me, at the millions and millions of stars that dot the firmament of heaven in the night-time; I look out on all the mysteries of nature and the mysteries of life, and I ask myself the solution of the riddle, and I bow my head in the presence of the infinite mystery and say: 'I don't know.' I cannot tell. But for that man who understands it all and sees in it the work of a Supreme Being, who prays to what he honestly believes to be this Higher Power, I have the profoundest regard; and my communion of that poor, weak mortal with that Higher Power, which permeates the universe and which makes for good, and communion that lifts a man higher and higher and makes him better, I have regard for that. \* \* \* I have never asked for a human being's life and I hope that I may never ask for a human life, to the end of my days. I do not ask for his (Orchard's). If the time should ever come when somebody pronounced against him the decree of death and nobody else would ask to save his life, my petition would be there to save it. I don't believe in man's tinkering with the work of God. I don't believe that you and I can say in the light of heaven that, if we had been born as he was born, if our brains had been molded as his was molded, if we had been surrounded as he has been surrounded, we might not have been like him."

—Clarence Darrow, of Chicago, in *Defense of Wm. D. Haywood, for the murder of ex-Governor Frank Steuenberg, of Idaho, on the night of Dec. 30, '05. For W. E. Borah's Reply to the above, See Borah.*

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### ON MAINTAINING THE NORTH

"If war must come, if the bayonet must be used to maintain the Constitution I can say before God my conscience is clear. I have struggled long for a peaceful solution of this trouble. I deprecate war, but if it must come I am with my country in every contingency and under all circumstances. At all hazards our government must be maintained, and the shortest pathway to peace is through the most stupendous preparation for war."

—Stephen A. Douglas's speech before the legislature, at Springfield, Ill., Apr. 25, 1861. "One of the most powerful speeches ever listened to from the lips of man," said a listener.



## MATTHEW P. DEADY (1824-1893), Oregon

### A SPECTACLE—NOT A “DRAMATIC COMPOSITION”

“But if this play (‘Black Crook’) is a ‘Dramatic composition,’ within the purpose and meaning of the act of Congress, the motion of the claimants for an injunction should be allowed.

“But I do not think it such a composition, it is a mere spectacle. The dialogue is very scant and meaningless, and appears to be a mere accessory to the action of the piece; a sort of verbal machinery tacked on to a succession of ballet and tableaux. The principal part and attraction of the spectacle seems to be the exhibition of women in novel dress, or no dress, and in attractive attitudes of action. To call such a spectacle a ‘dramatic composition’ is an abuse of language, and an insult to the genius of the English drama. A menagerie of wild beasts, or an exhibition of *model artistes*, might justly be called a dramatic composition. Like those, this is a spectacle, and altho it may be an attractive or a gorgeous one, it is nothing more. In my judgment, an exhibition of women ‘lying about loose,’ or otherwise, is not a dramatic composition, and therefore, not entitled to the protection of the copyright act, and the relief sought for is denied.”

—*The above decision was made by Judge Deady, in Martinetti v. Maguire, 1 Deady, 216.*

Deady was admitted to the bar in Ohio; reached Oregon in '49, appointed by the President of the U. S. in 1855 a judge of territorial Supreme Court, and served until Oregon was admitted as a State, in 1859, appointed by President Buchanan, U. S. District Judge for the District of Oregon, in 1859, and held the office until his death in 1893—34 years.

### MOB-LAW DISCOURAGED

“Much has been said to you in this connection by the leading counsel for the defendants, in extenuation, if not in justification, of vigilance and citizens’ committees and it is maintained that there are times when the people of a place are justified in taking the law into their own hands, and administering justice in obedience to the methods of a higher law than that found in the books. But, gentlemen, we are here as ministers of the law of the land, and we do not know or recognize any other. We have taken a solemn oath to administer this law and be governed by it in the determination of this case. When we loose our hold on this storm-tried anchor we are adrift, without rudder or compass, on the dangerous sea of prejudice, passion and falsehood.”

—*In Boyle v. Case, 18 Federal Reporter, 880. From Judge Deady’s charge to the jury, in an action for damages brought by the victim of a vigilance committee.*

### DEADY’S THEORY OF GOVERNMENT

“By the time I was thirty years of age, I had pretty thoroughly studied the Constitution and political history of the United States for myself. Among others, I had read Jefferson’s Works, Webster’s and Calhoun’s speeches, Washington’s Messages, Hamilton’s Works, and the report of Burr’s trial and Chase’s impeachment, and Marshall’s life of Washington, and became on general principles what might be called a federalist—a believer in the doctrine that the Constitution created a government for a nation, supreme in its sphere, and the ultimate judge of its own powers, and not a mere compact between independent and sovereign states, to be terminated at the will or pleasure of either of them.”



## WHAT A CONSTITUTION SHOULD BE

"This work of our constitution builders has survived for more than four decades, in all its original symmetry and vigor. Iconoclasts arise who tell us that it was well enough for the day of small things, but that we have outgrown it; that it is inadequate to our present needs, and others who would conform it to their honest yet vague and visionary aspirings for they know not what. In many of the American states we have witnessed these mutations of the organic law, largely symptomatic of a grave distrust of parliamentary government. As I have said elsewhere: 'A constitution properly should contain but few specifications; among a free people, who have earned their freedom, a people who are able to maintain and are worthy of liberty, the fewer the better. A designation of the departments of the Government, a bill of rights, a recognition of Magna Charta, the petition of right, trial by jury, *habeas corpus*, a specification of the duties of these departments, a few checks; this should suffice. Every step beyond this is an encroachment upon the rights of the people, is an arraignment of the people themselves, is a questioning of their right, or, at least capacity, for self government.'

"And I might have added that this is none the less true that it is accomplished by a species of political *felo de se* affecting as well a blameless posterity. If the many restrictions placed in recent years upon the different departments of the state government by their new constitutions are needed, they stand forth as terrible indictments of the servants of the people, of the people themselves.

"If these checks are really needed, then has virtue departed from the land. Corporate lust cannot corrupt a people worthy to govern itself. No such bugbear as that is needed to justify these constitutions. If, like the later Roman-republic, we are corrupt to the core, fitted only for Caesar, if we are rotten before we are ripe, indeed is destruction inevitable, and no hand, no check, may stay the rapid descent.

"But I believe these later constitutions are mistakes in attempting to deal minutely with so many varied interests and our people, with the good sense which is so peculiar to the American, will ultimately recognize this."

—*Largely the Father of the Oregon Constitution, and which stood for nearly 50 years without an amendment.*

## LORD JOHN CAMPBELL'S ESTIMATE OF LORD MANSFIELD

"Lord Mansfield must, I think, be considered the most prominent legal character and the brightest ornament to the profession of the law, that appeared in England during the last century. As an advocate, he did not display the impassioned eloquence of Erskine, but he was for many years the first man at the bar among powerful competitors. \* \* \* Of his three successors, Kenyon, Ellenborough and Tenterden, the first affected a knowledge of nothing beyond law, except a few Latin quotations, which he constantly misapplied; the second, though a scholar, and a ripe and good one, was only a few months in the House of Commons, during which he did nothing beyond bringing in a law bill—and in the House of Lords, he rather alarmed the Peers by violent ebullitions of indignation, then charmed or convinced them by polished reasoning; the last, having devoted all his best years to the drawing of special pleas, never was a member of the House of Commons and the few times he addressed the Lords he seemed to be opening to the jury the issues on some very complicated record."—2 *Lives of the Chief Justices*, 470-2.



OLIVER H. DEAN (1845- ), Missouri

## THE PHILOSOPHY OF OUR GOVERNMENT

"The philosophy of our governmental institutions necessarily is that no individual can in the affairs of life succeed without benefiting his fellowmen. If a man is a great artist, poet, writer, educator, surgeon, physician, inventor, or scientist, his work must result for the benefit of humanity. If a man is a successful farmer, it is because he cultivates his fields intelligently for the benefit of his fellowmen, who will consume what they bring forth. If he is a successful manufacturer and establishes great industries, he does it only because he manufactures something the public highly needs. If a successful merchant, he buys wisely and sells better goods at a more satisfactory price to his patrons—goods needed to satisfy the wants or tastes of the people. If a railroad is built, a gas or electric light plant is established, or telephone or telegraph lines are constructed across the country, our ships are built to navigate our lakes or seas, or boats our rivers, all by private enterprise, it is because there is need for them, and the public is benefited by them. If great financial institutions arise, they are based upon the prosperity of our country and are a necessary part of its growth. It follows that every kind of work, business enterprise, profession and pursuit, is administered to meet a public want, and if that want does not exist in any of these things there can be no success in it. It follows, then, too, that in the final analysis, all that society gets for its own uses and benefit, it gets almost wholly through the private administration of private affairs for the social good. It follows, too, that the individual who honestly works with the greatest industry and who brings to that work the highest intelligence or even genius in the end, is performing the highest and best work for society as its chief beneficiary."

—From the 'Law of the Land' delivered Apr., 1914, before the law department of the University of Mo.

## THE AMERICAN REPUBLIC

"The American republic, vast as it is, has demonstrated that its maintenance in all its integrity is as important to the people of the Pacific states as it is to the Atlantic states, or the Gulf states, or as it is to the middle or Lake states. It has demonstrated that the people of Alaska, Arizona, and other territories, colonies, if you please, which have not yet attained statehood, are as highly concerned in the permanence of the federal government over all as are the states themselves. That distances of several thousand miles from one part of our republic to the other do not diminish, but enhance, the value of the federal union. Differences in soil, climate, and products in one part add strength, wealth, and independence to every other part. Out of these differences have grown enormous internal commerce that binds the states together. Our history has demonstrated that our scheme of government, so wisely planned, and yet so simply planned, which gives to the central authority control over those things only which are of national concern, is adapted not only to our continent composed of states and territories, but that it possesses within itself the quality of indefinite expansion over other peoples which are fitted for republican government, such as were never exhibited in any other form of government. Even the commonwealth of Australia is no further from Washington in these days of cable, telegraph and steamships than Indiana and Illinois were from our national capitol in their early history.



"It is always unsafe to prophesy. But, if England should lose control of her great English-speaking colonies, the question arises under what constitution and under what flag would they find equal rights, equal protection, and equal advantages to those which they would acquire under the American constitution and the American flag? Who shall affirm, who shall deny, that the lofty prophecy of Jefferson may not yet find fulfillment, when he declared that 'the farthest star in the heavens shall bear the name of Washington, and the city he founded shall be the capital of the Universal republic.' "

—*'The Making of the Constitution,' delivered before the Illinois Bar Ass'n., Peoria, Ill., June, 1909.*

### THE BASIC PRINCIPLE

"Our institutions have endowed opportunity. They have created individual responsibility. They have aroused individual ambitions to the highest efforts. They have urged and sustained those who have exhibited ordinary efforts and who under preceding conditions of society would have made no effort and would have been the mere servants and toilers of the few. They proclaim to each: 'Your brain and brawn are yours to make the most of, by yourself and for yourself. The result of your intelligence and labors belong to you and yours and not to somebody else. You are free and self-respecting men and the more you accomplish as units of society, the more you accomplish for society as a whole.' This is the philosophy of our political institutions. This is the underlying theory and it is the only true theory.

"To this end we have established for the betterment of mankind on this American soil, and to all who may in the future reside here, a government which shall perform governmental offices, and which will not undertake the work the individual should perform. It will not invade his province and take away from him the work that belongs to him to do.

"We are entitled to liberty in divine things. Still more are we entitled to liberty in human things. If a man should be permitted to think freely and act freely in the matters which should pertain to his soul's salvation, he should be permitted to think freely in the matters which pertain to his earthly welfare. If he is capable of determining those matters which pertain to his religion he should also be permitted to determine those things which concern the ordinary affairs of life.

"There are things which are necessarily governmental, but they are relatively few. The great work of our law is and should be confined to the regulation and protection of private rights. The regulations to that end will necessarily become more numerous as the work of the individual members of society multiplies and extends; but those regulations should not be established at the expense or in derogation of the controlling principle of individual liberty."

Oliver H. Dean, of the Kansas City, Mo., Bar, and President of the Kansas City School of Law, has a fondness in the intervals of an active practice to speak and write on great constitutional questions and principles. The above is from his discourse on the 'Basic Principle' delivered by him to the law students of the University of Michigan, June, 1916.

—*The Author.*



## DELPHIN MICHAEL DELMAS (1844- ), California

### DENUNCIATION OF STANFORD WHITE

"If you have been near death, you know that at such a time the mind travels with the rapidity of lightning. The mind goes back over the past like lightning. Then Thaw, as he looked upon the hideous form of this man, saw the whole panorama of White's Life. He saw him making his way into the family where poverty dwelt; saw him laying bare his plans to ingratiate himself; saw him giving the mother money to absent herself from the city that he might perpetrate the deed of shame he had planned; saw him inflaming her youthful imagination; plying her with wine; saw her mind wandering under the fatal drug; saw her losing consciousness; saw her in her shame; saw him next day kissing the hem of her dress, heard his thousand protestations of love; heard her refusing, and saw that chamber in Paris where she told him the story of her wrongs; heard again his many proposals to her; saw that terrible night when she had told him her story; saw himself as he walked the floor and cried: 'O God O God!' saw her return to New York; saw her meet this man who had wronged her; saw her about to fall into this villain's hands, and saw himself rescue her from this man. He saw himself again at the altar marrying her; saw her when her mind was poisoned against him by the same man who had ruined her; saw her rescued from the man; went over the happy months he had lived with her in his mother's house; saw this monster and he heard his words, 'I will get her back,' and he knew not, he reasoned not, he struck as does the tigress to protect her home—struck for the purity of American homes—struck for the purity of American maidens—struck for the purity of American wives. He struck, and who shall say he was not right? He had appealed to the Pinkertons, to the district attorney, and that night he appealed to God, and God that night answered that cry—the cry of the fatherless child. And God then redeemed the promise He had made thousands of years ago when He said He would hear the cries of the afflicted and that He would make the wives of the oppressors widows and their children orphans."

—*Delphin M. Delmas, then of California, later of N. Y. Defense of Harry K. Thaw, for the Murder of Stanford White, Feb. 4, 1907. (Jerome prosecuted, and the jury was unable to agree, and a mistrial was declared).*

Mr. Delmas was born in France, Apr. 14, 1844, son of Antoine and Coralie Delmas, removed to California in boyhood; A.B. Santa Clara College, 1862—A.M., 1863—Ph.D., 1903; LL.B., Yale, 1865; married Pauline Hodge, of San Francisco, Apr. 7, 1869; admitted to California Bar, 1866; practiced in San Jose, California, 1866-1883; San Francisco, until 1883, and later in New York City, going to latter city in spring of 1907 to defend Harry Thaw, in which case he introduced the now famous plea of 'Dementia Americana.' The jury disagreed. He was criticised by his associate counsel, John B. Gleson, for using this defense. He formed a partnership in New York, known as Delmas, Towne and Spellman, and remained in that city for about four years. He is now practicing his profession in Los Angeles, California, and lives in Santa Monica, that State.

He was district attorney for Santa Clara Co., California, 1868; regent of the University of California 1885; delegate at large to the Democratic National Convention, at St. Louis Missouri, 1904; is a Catholic, Democrat; belongs to the Pacific and Union Clubs. He has published 'Speeches and Addresses,' 1901.)



## THOMAS. DENMAN (1779-1854), England

### SHAKESPEARE

"A few simple facts record the praise of Shakespeare: the insatiable demand for his works, the swarming theatres which find them ever new and delightful, real histrionic genius aims at embodying his conceptions, while it disdains to receive its task from any meaner hand. His power is manifested in tears and smiles, in agony and raptures, on its first display to the sensibility of youth; in the tranquil delight, on its hundredth repetition, of reflecting age; in the permanency imparted to our language by the richness, the strength, the ever varying graces of his style; in the gentle, yet generous spirit, the sympathy with all the kindly affections, the high feelings of magnanimity and honor, by which he has produced a lasting effect on the character of Englishmen."—*Thomas Denman*.

### STOCKDALE v. HANSARD

"The *principle* is that no one branch of the legislature, *acting separately and alone*, can, by any so called privilege, alter, suspend, or supersede the established laws of the land, so as to prevent the subject from resorting to any remedy or enforcing any right which those laws have provided for or conferred on them."—*Thomas Denman, in Stockdale v. Hansard*.

### CALUMNY

"Calumny is a strong word, but I do not complain of it, for I perceive the sense in which it is used by its writer. The calumny is not that I stated anything untruly, but that I made strong observations on the evidence of a person who stated himself to have once been a slave trader. If I had incorrectly charged Dr. Cliffe with being a slave trader, I should plead guilty to uttering the worst of calumnies; but he himself confesses that he has been a slave trader, the character affixed to that crime is not affixed by me, but by the law. The law of England proclaims him, as long and inasmuch as he was a slave trader, to have been a pirate, a robber, and a felon. So do the public acts of the Brazilian empire, where he was domiciled."

—*Lord Thomas Denman—House of Commons, on 'Slave Trade,' 1848.*

### SCIENCE AND LITERATURE

"For nothing can so effectually contribute to our prosperity and honor as the emulous advancement of our sons in the career of science and literature. I trust that my zeal in some degree may supply what is wanting in ability; and I can offer at least my testimony as a witness, speaking from experience and observation, to the value of literary pursuits as a means of happiness. They are in truth, in the language of that lesson imbibed in my early years, 'The nourishment of youth, the delight of age, the refuge and consolation of adversity, the companions of our weary travels, of our rural solitudes, of our sleepless nights.' These words were uttered near two thousand years ago by the great statesman and orator of Rome (Cicero), who in those characters performed but a fleeting service to his own country, while as a philosopher and a man, he has conferred on all mankind which must be felt while the world endures."

—*Thomas Denman, Lord Chief Justice of England, for eighteen years. Extract from speech in opening of the London Literary and Scientific Institution, 1828.*



## NAPOLEON

“Napoleon has many claims, military glory, internal improvement of everything—the monuments of art, and, above all, the embellishment of Paris. How this last object has been carried on to the astonishing extent we see, by a man constantly engaged in such wars, is perfectly inconceivable. \* \* \* It happens that all France can boast of is connected with his name.”—*Thomas Denman*.

## COMMIT WHAT YOU WRITE

“Anything worth writing is worth committing to memory.”

Thos. Denman, Eng., (1779-1854), Chief Justice of England, 1832-1850—18 years. Was counsel, with Brougham, for queen caroline; and dissented in O’Connell trial, for treason, while a judge.—*The Author*.

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## OWNERSHIP OF REAL ESTATE THE BASIS OF LIBERTY

“A general and tolerably equal distribution of landed property is the whole basis of national freedom. The system of the great Montesquieu will ever be erroneous till the words property or lands in fee simple are substituted for virtue throughout his ‘Spirit of Laws.’ Virtue, patriotism, or love of country never was and never will be till men’s natures are changed, a fixed, permanent principle and support of government. But in an agricultural country a general possession of land in fee simple may be rendered perpetual and the inequalities introduced by commerce are too fluctuating to endanger government. An equality of property, with a necessity of alienation, constantly operating to destroy combinations of powerful families, is the very *soul of a republic*. While this continues, the people will inevitably possess both power and freedom; when this is lost power departs, liberty expires and a commonwealth will inevitably assume some other form.

“The liberty of the press, trial by jury, the habeas corpus writ, even Magna Charta itself, although justly deemed the palladia of freedom, are all inferior considerations when compared with a general distribution of real property among every class of people. The power of entailing estates is more dangerous to liberty and republican government than all the constitutions that can be written on paper, or even than a standing army. Let the people have property and they will have power—a power that will forever be exerted to prevent a restriction of the press and abolition of trial by jury, or the abridgement of any other privilege. The liberties of America, therefore, and her forms of government, stand on the broadest basis. Removed from the fears of a foreign invasion and conquest, they are not exposed to the convulsions that shake other governments; and the principles of freedom are so general and energetic as to exclude the possibility of a change in our republican constitutions.

“But while property is considered as the basis of the freedom of the American yeomanry there are other auxiliary supports, among which is the information of the people.”—*Noah Webster, Connecticut, 1758-1843*.

Noah Webster, noted scholar and author of the first Webster’s Dictionary. His spelling-book (1783-5) remained in use for two generations. His dictionary was published in this country and Great Britain in 1828 and in an enlarged edition in 1840-41. Noah Webster started out as a lawyer.—*Author*.



CHAUNCEY M. DEPEW (1834- ), New York

## HAMILTON

"In no age or country has there appeared a more precocious or amazing intelligence than Hamilton. At seventeen, he annihilated the President of his college upon the question of the rights of the colonies, in a series of anonymous articles which were credited to the ablest men of the country; at forty-seven, when he died, his briefs had become the law of the land, and his fiscal system was, and after one hundred years, remains, the rule and policy of our government. He gave life to the corpse of national credit, and the strength for self-preservation and aggressive power to the Federal Union. Both as an expounder of the principles and an administrator of the affairs of government he stands supreme and unrivaled in American history."

—Chauncey M. Depew—*Centennial Anniversary, N. Y., Apr. 30, '89.*

## A LAWYER'S EDUCATION NEVER ENDS

"The valedictorian of the college, the brilliant victors of the Moot Courts who failed to fulfill the promise of their youth, have neglected to continue the study and lost the enthusiasm to which they owed their triumphs on mimic battlefields. Business men may have a lucky stroke of fortune; preachers may buy or borrow sermons; quacks may win riches by a patent medicine; but the lawyer can rely on no one but himself. He is like the knight in the ancient tournament, when the herald sounded the trumpet, and rode down the lists. Whether he splintered his enemy's lance or was unhorsed himself, depended upon his own prowess and skill. Upon his advice men risk their characters and fortunes. In the exegesis of the trial he wins or loses by his own knowledge of his case, his ability to draw from a well-stocked armory the principles to meet unexpected issues, his readiness to seize and turn to instant advantage testimony which can help to avert the force of that which can harm, by his trained ability to so discern and analyze amidst the mass of conflicting evidence the truth he seeks, and so present his cause to the court and jury, that he brings them both to his own convictions. This can only be done by thorough preparation and laborious study continued all through life. It is very difficult, with no immediate motive to offer incentive, to study and read while waiting for clients. It requires discipline, and is discipline. It tests the question of fitness for the work of the profession."

## THE EMPIRE STATE

"When the Yankee conquered New York, his union with the Dutch formed these sterling elements which have made the Republic what it is. Yankee ideas prevailed in this land in the grandest contest in the Senate of the U. S. which has ever taken place, or ever will; in the victory of Nationalism over Sectionalism by the ponderous eloquence of that great defender of the Constitution, Daniel Webster. And when, failing in the forum, Sectionalism took the field, Yankee ideas conquered again in that historic meeting when Lee gave up his sword to Grant. And when, in the distribution of credit and industry which followed, the twin heresies Expansion and Repudiation stalked abroad, Yankee ideas conquered again in the policy of our distinguished guest, the Secretary of the Treasury (John Sherman). So great a triumph has never been won by any financial officer of the government before, as in the funding of our national



debt at four per cent. and the restoration of the national credit, which has given an impulse to our prosperity and industry that can neither be stayed nor stopped.

"When Henry Hudson sailed up the great harbor of New York, and saw with prophetic vision its magnificent opportunities, he could only emphasize his thought, with true Dutch significance, in one sentence—'See here!' When the Yankee came and settled in New York, he emphasized his coming with another sentence—'Sit here!' And he sat down upon the Dutchman with such force that he squeezed him out of his cabbage and his residence. He found this city laid out in a beautiful labyrinth of cowpatches, with the inhabitants and the houses all standing with the gableends to the street; and he turned them all to the avenue, and made New York a parallelogram of palaces; and he has multiplied to such extent that now he fills every nook of our great State, and we recognize here tonight that, with no tariff, and free trade between New England and New York, the native specimen is an improvement upon the imported article. \* \* \*

"New York, today, the Empire State of all the great States of the Commonwealths, brings in thru her grand avenue to the sea 80 per cent of all the imports, and sends forth a majority of all the exports of the Republic. She collects and pays four-fifths of the taxes which carry on the government of the country. In the close competition to secure the great Western commerce which is today feeding the world and seeking an outlet along 3,000 miles of coast, she holds by her commercial prestige and enterprise more than all the ports from New Orleans to Portland combined. Let us, whether native or adopted New Yorkers, be true to the past, to the present, to the future, of this commercial and financial metropolis. Let us enlarge our terminal facilities and bring the rail and the steamship together. Let us do away with the burdens that make New York the dearest, and make her the cheapest, port on the continent; and let us impress our commercial ideas upon the national legislature, so that the navigation laws, which have driven the merchant marine of the Republic from the seas, shall be repealed, and the breezes of every clime shall unfurl and the waves of every sea reflect, the flag of the Republic."

—*Chauncey M. Depew, N. Y., Dec. 22, 1879. Graduated at Yale, '58; admitted to N. Y. bar, '58; attorney for N. Y. Central and Hudson River R. R., '69; president of that Ry., '85-98; U. S. Senate, '99-1910.*

### McKINLEY'S FIRST CASE

After McKinley had been admitted to the bar and opened a law office in Canton, O., a fortnight passed without a client, and the youthful lawyer was beginning to find the time hang very heavy on his hands. Then one day his old preceptor, Judge Glidden, stepped into his little office.

"McKinley," said he, "here are the papers in a case of mine. It comes up tomorrow. I have got to go out of town, and I want you to take charge of it for me."

McKinley was nonplussed; declared he could not do justice to the case at so short a notice. "I never have tried a single case yet, Judge," said he.

"Well, begin on this one then," was the Judge's reply. And it was finally settled that McKinley should do so. He sat up all night working on the case, tried it the next day, and won it. A few days later Judge Glidden entered his office and handed him \$25. McKinley demurred at taking it.

"It is too much for one day's work," he said.

"Don't let that worry you," replied Glidden, "I charged them \$100 for the case, and I can well afford a quarter of it to you."



## WIRT DEXTER (1831-1890), Illinois

### "PULLMAN CO. NOT LIABLE FOR PASSENGER'S STOLEN PROPERTY"

Wirt Dexter, of Chicago, was a son of Judge Samuel W. Dexter, the founder of Dexter, Mich., and a nephew of Franklin Dexter, a contemporary of Daniel Webster, and grandson of Samuel Dexter, of Boston, Secretary of War, and afterwards of the Treasury, in John Adams's cabinet; called by Daniel Webster, 'the Great Expounder of the Constitution'. Wirt Dexter established the law in the State of Illinois that the Pullman Car Co. is not liable for goods or money so lost, as an inn-keeper, or as a common carrier. Mr. Dexter took the position that the Company was not liable as an inn-keeper, because it was not open to the general public, that it received pay in advance, from lodgers, merely for sleeping accommodations afforded by their cars, and only for a particular class, and for a particular trip, and for a particular berth; second, that the Company was not liable as a common carrier, because the Company received no pay for transportation—the railroad company receiving all the pay for transportation, and under an arrangement with the Pullman Co., hauling its cars. The Supreme Court of Illinois affirmed the correctness of each of these defenses, and this decision has since been the law of the business of the Pullman Co. (See *The Pullman Co. v. Smith*, 73 Ill., 360).

Another great case was one in favor of the Northwestern University, which held exempt from taxation 250 acres of very valuable land, upon which was located the University, and which was platted into lots, under a provision of the Constitution of the State, exempting from taxation certain defined property. The language of the Constitution being in the following words:—

"All property of institutions of learning, including the real estate upon such institutions, are located, not leased by such institutions, or otherwise used with a view to profit."

Another great case was *Blatchford v. Newberry*, 99 Ill., 11, involving \$5,000,000. "Mr. Wirt Dexter knew Burke, Erskine, Curran, and Brougham, Webster, Choate, O'Connor, Black and Jeremiah Mason," says Franklin H. Heard, "as if he had spent his life in their company. \* \* \* He had a life-long admiration for good talkers, and his friendships were broad while discriminating. His father was a boyhood friend of Wendell Phillips, and the house of Mr. Dexter was for twenty years the Chicago home of this graceful and brilliant orator. James Russell Lowell, Ralph Waldo Emerson, Theodore Parker, Charles Dudley Warner, Judge David Davis, Henry Irving, and a host of men eminent and honored in every walk of life, also regarded Mr. Dexter's house as their natural stopping place, when in the city."

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## MARK TWAIN ON ADVERTISING

When Twain was editing the *Virginia City Enterprise*, writing copy one day and mining the next, a superstitious subscriber once wrote and said he had found a spider in his paper, was this good or bad luck? Twain replied, in "Answers to Correspondents" column as follows: "Old Subscriber: The finding of a spider in your copy of the paper was neither good or bad luck. The spider was merely looking over our pages to find what merchant was not advertising so it could spin its web across his door in anticipation of leading an undisturbed existence forever after."

—*The Author.*



## SAMUEL DEXTER (1761-1816), Massachusetts

### AN IMPARTIAL JUDICIARY

"It is proved by the history of man, at least of civil society, that the moment the judicial power becomes corrupt, liberty expires. What is liberty but the enjoyment of your rights, free from outrage or danger? And what security have you for these but an impartial administration of justice? Life, liberty, reputation, property, and domestic happiness, are all under its peculiar protection. It is the judicial power uncorrupted that brings to the dwelling of every citizen, all the blessings of civilized society, and makes it dear to man. Little has the private citizen to do with other branches of government. What to him are the great and splendid events that aggrandize a few eminent men that make a figure in history? His domestic happiness is not less real because it will not be recorded for posterity; but this happiness is his no longer than courts of justice respect it. It is true injuries cannot always be prevented; but while the fountains of justice are pure, the sufferer is sure of recompense. Contemplate the intermediate horrors and final despotism that must result from mutual deeds of vengeance, when there is no longer an impartial judiciary, to which contending parties may appeal, with full confidence that principles will be respected. Fearful must be the interval of anarchy; fierce the alternate pangs of rage and terror, till one party shall destroy the other, and a gloomy despotism terminate the struggles of conflicting factions."

### IMMORTALITY OF THE SOUL

"It is objected that we know not the manner in which a human being after death can be awakened to life. I answer, supposing it to be true that we are to live again, yet we can know nothing about it, for want of *means* of knowledge. Where there can exist *no experience* there can exist no knowledge; and *probability* is all that it is possible to obtain. The inability of a blind man to discover colors does not disprove their existence. Even when we have experience of facts, we often know nothing of the cause or manner of their production. When anyone will tell me how an oak is produced from an acorn, I will tell him how an immortal being is produced from a man. Probably the successive stages of man's existence are produced by the regular operation of Nature's process of vegetation, by which a beautiful flower rises from the dust of the earth. We know not how—perhaps, our next stage of being may be only preparatory to another, and the time may arrive when to us Nature will no longer be a mystery. But, at present, we are so constantly reminded of our ignorance that an objection, founded on the presumption that we know the system of things and the manner of Nature's operations, future as well as present, cannot outweigh the strong probability which results from the foregoing observations."

### A DISHONORED HOME

"The great principles of common sense and of truth belong to us all. They are one and the same, today and forever. A matter so very intel-



ligible, as that, which awaits your decision, cannot differently affect the minds of different individuals. Therefore, it is that I repose the most perfect reliance upon the decision of your Honors (the case was before the Supreme Court of Mass.), on the present occasion. I cannot be mistaken, in reading aright a decree, in favor of my deeply injured client (Dexter was for the plaintiff husband, who sought a divorce, *a vinculo* for adultery on the wife's part), in the countenance of those who are to pronounce his destiny today. But let me suppose that you reject his appeal—whither shall he fly? That home has become a hell upon earth for him! You will bid him seek comfort, under that dishonored roof, and soothe his anguish in the presence of his children? *His* children! He may take them upon his knee—not with that feeling of paternal confidence, as in other days—but for the purpose of scrutinizing their countenances for the lineaments of every false friend!”

—*Dexter's answer to William Sullivan and Harrison Gray Otis, in a divorce case.*

### PARALLEL BETWEEN DEXTER AND PINKNEY

“We have had very great display of eloquence, Mr. Pinkney and Mr. Dexter have particularly distinguished themselves—sometimes opposed, sometimes colleagueed together. Mr. Dexter's eloquence you have heard; he and Mr. Pinkney have called crowded houses; all the belles of the city have attended, and have been entertained for hours. I must, however, after all, give the preference to Mr. Pinkney's oratory. He is more vivacious, sparkling and glowing; more select and exact in his language, more polished in his style, and more profound and earnest in his judicial learning. Mr. Dexter is calm, collected, and forcible, appealing to the judgment. Mr. Pinkney is vehement, rapid, and alternately delights the fancy and seizes on the understanding. He can be as close in his logic as Mr. Dexter when he chooses; but he can also step aside at will from the path, and strew flowers of rhetoric around him. Dexter is more uniform, and contents himself with keeping you where you are. Pinkney hurries you along with him, and persuades as well as convinces you. You hear Dexter without effort; he is always distinct and perspicuous, and allows you an opportunity to weigh as you proceed. Pinkney is no less luminous, but he keeps the mind on the stretch, and you must move rapidly or you lose the course of his argument.”

—*Joseph Story—in letter to his wife, Washington D. C., March 10, 1814.*

Rufus Choate said: “I used to hear the elder generation of judges and lawyers say that Dexter had made arguments greater than Webster's.”

Daniel Webster said of him:

“In point of character, Dexter undoubtedly stands next to Parsons at the Boston bar; and in the neighboring counties and States, I suppose he stands above him. He has a strong, generalizing, capacious mind. He sees his subject in one view, and in that view, single and alone, he presents it to the contemplation of the hearer. Unable to follow Parsons in minute, technical distinctions, Parsons is unable to follow him in occasional vaultings and boundings of his mind. Unlike Parsons, too, he cannot be great on little occasions. Parsons begins with maxims, and his course to the particular subject and particular conclusion brightens and shines more and more clearly to its end.

“Dexter begins with the particular position which he intends to support; darkness surrounds him; no one knows the path by which he arrives at his conclusion. Around him, however, is a circle of light when he opens his mouth. Like a conflagration seen at a distance, the evening mists



may intervene between it and the eye of the observer, altho the blaze ascend to the sky and cannot be seen."

—(*Said by Webster, when studying law in Christopher Gore's office in Boston, 1804—Harvey's Reminiscences of Webster, 82.*)

### JUDGE STORY'S ANECDOTE OF MARSHALL, AMES, AND DEXTER

Mr. Samuel Dexter was once in company with Fisher Ames and Chief Justice Marshall. The latter commenced a conversation (for he was almost alone in the conversation) which lasted some three hours. On breaking up, Ames and Dexter commenced, on their way home, praising the depth and learning of their noble host. Said Ames, after a short talk, 'To confess the truth Dexter, I have not understood a word of his argument for half an hour.' 'And I,' good humoredly rejoined Dexter, 'have been out of my depth for an hour and a half.'"

—2 *Story's Life and Letters*, 504

### THEOPHILUS PARSONS, JR.'S, ESTIMATE

"Of my father's contemporaries at the bar, I suppose that the four most eminent were Sullivan, Dexter, Otis and Prescott. Sullivan was older than my father. He died in 1808, and I never knew him. Samuel Dexter was eleven years younger. He died in 1816, aged fifty-four. I cannot say that I ever knew him personally. I have seen him, however, as I was nineteen when he died; and a year or two before his death I heard him make a speech in Faneuil Hall, in which he gave his reasons for not supporting the measures of the Federal Party, of which, to that hour, he had been the leader. If this was not *his* greatest speech, it was one of the greatest ever delivered in that hall, or as I think, anywhere. Few events of my earlier years do I remember so perfectly. I cannot recall the line of argument, but the tone and manner, and the effect, I well remember. There was nothing in it of apology, nothing of entreaty, little, indeed, of self-defense; but such an explanation of his conduct, and such a statement of his principles, as a man might make to his fellow citizens, while he respected them and was determined that they should respect him. As I recall him, it does not seem to me that he had much elegance, or even eloquence, of language or delivery, but that the whole speech, in tone, words, thoughts, and effect, was characterized by *power*. He did not seem to persuade men to believe with him, but to compel them to see that as truth which he thought to be true. I suppose he was not a scientific lawyer—not one, I mean, acquainted with the whole system of the law, and seeing every part in the light of all the rest. But he was a very great lawyer *in rem*; for he brought to the examination of a case extraordinary ability, learning enough to guide his study and thorough devotion to his work. As an advocate in cases which demand a close investigation of complicated facts and rules, and a clear perception and a strong hold of the guiding principles that is to solve the problem finally, and the power to carry the court and jury with him through the long research or argument, I am confident that he was never surpassed in New England, if in our country."

—*Memoir of Chief Justice Parsons, 181-2.*

### THE EMBARGO CASE

"The case came to hearing and solemn argument; and he who espoused their (New England's) cause, and stood up for them against the validity of the 'Embargo Act', was none other than that great man of whom the gentleman (Robt. Y. Hayne) has made honorable mention, Samuel



Dexter. He was then, sir, in the fullness of his knowledge and the maturity of his strength. He had retired from long and distinguished public service here, to the renewed pursuit of professional duties, carrying with him all that enlargement and expansion, all the new strength and force, which an acquaintance with the more general subjects discussed in the national counsels is capable of adding to professional attainment, in a mind of true greatness and comprehension. He was a lawyer, and he also was a statesman. He had studied the Constitution, when he filled public station, that he might defend it; he had examined its principles that he might maintain them. More than all men, or at least as much as any man, he was attached to the general government and to the union of the States. His feelings and opinions all ran in that direction. A question of Constitutional law, too, was, of all objects, that one which was best suited to his talents and learning; such a question gave opportunity for that deep and clear analysis, that mighty grasp of principle which so much distinguished his higher efforts. His very statement was argument; his inference seemed demonstration. The earnestness of his own conviction wrought conviction in others. One was convinced, and believed, and assented, because it was gratifying, delightful, to think and feel, and believe, in union with an intellect of such evident superiority."

—*From Daniel Webster's Reply to Robt. Y. Hayne, in the United States Senate, Jan. 26-7, 1830.*

#### TILT WITH JUDGE DAVIS IN EMBARGO CASE

"Mr. Dexter argued in the Embargo Cases, as they were called, that a majority, in New England, deemed this law a violation of the Constitution. \* \* \* Here is a law stopping all commerce, and stopping it indefinitely. The law is perpetual; that is, is not limited in point of time and must of course, continue until repealed. It is as perpetual, therefore, as the law against treason or murder. Now is it regulating commerce, or destroying it? Is it guiding, controlling, giving the rule to commerce, as a subsisting thing, or is it putting an end to it altogether? After Judge Davis, who had been Dexter's classmate at college, decided that the law was constitutional, and before that decision had been confirmed by a higher tribunal, Dexter persisted in arguing the question of constitutionality to the jury, notwithstanding the remonstrance of the Bench. At length, Judge Davis, under some excitement, and after repeated admonitions, said to Dexter, that if he again attempted to raise that question to the jury, he should feel it to be his duty to commit him for contempt of court. A solemn pause ensued; and all eyes were turned towards Dexter. With great calmness of voice and manner, he requested postponement of the case until the following morning. The Judge assented; some other matter was taken up; Dexter left the courtroom. The next morning there was a full attendance of persons anxious to witness the result of this extraordinary collision between the advocate and the Judge. Being asked if he was ready to proceed, Dexter rose, and facing the Bench, commenced by stating that he had slept poorly, —had passed a night of great anxiety; had reflected very solemnly upon the occurrence of yesterday; and trusted it had not failed to exercise the thoughts of another, in all its bearings. No man cherished a higher respect for the legitimate authority of those tribunals before which he was called to practice his profession; but he entertained no less respect for his moral obligations to his clients. And, finally, after a few additional remarks, he stated to the Court that he had arrived at the clear conviction that it was his duty to argue the constitutional question to the jury, notwithstanding the decision of a single judge, of an inferior grade (Davis was a U. S. District Judge); and that he should proceed to do so, regardless of any consequences. He then turned to the jury; and, undisturbed by the Court, began, continued, and



ended a most elaborate argument against the constitutionality of the Embargo Law."—*Sigma's 'Reminiscences of Samuel Dexter,'* 60-1.

### INTEMPERANCE

"Give me the money paid for the support of drunken paupers in the U. S., and I will pay the expense of the Federal and every State government in the Union, and in a few years become as rich with the surplus as the Nabob of Arcot."—*Sigma's 'Reminiscences,'* 24.

### HATRED AND LOVE

"It is equally true of hatred as of love, that neither stands still."

### RUFUS CHOATE'S ESTIMATE

"Choate remarked on the very evanescent nature of traditionary repute—in reply to Parker's suggestion that he did not take half care enough of his fame,—and observed how entirely Samuel Dexter had faded from memory; of whom said he, 'I used to hear arguments greater than Webster's.'"—*Parker's 'Reminiscences,'* 298.

### FISHER AMES ON DEXTER

Fisher Ames wrote Christopher Gore in 1802—"Dexter is very able and will be an Ajax at the bar as long as he stays. You know, however, that his aversion to reading and to the practice is avowed. His head aches on reading a few hours, and if he did not love money very well, he would not pursue the law."—*Warren's Hist. Am. Bar,* 308.

### JUDGE STORY'S ESTIMATE

"He opened his arguments in a progressive order, erecting each successive position upon some other, whose solid mass he had already established, on an immovable foundation; till, at last, the superstructure seemed, by its height and ponderous proportions, to bid defiance to the assaults of human ingenuity. I am aware that these expressions may be deemed the exaggerations of fancy, but they only describe what I have felt, on my own mind; and I gather from others that I have not been singular in my feelings. \* \* \* In general acquirements, he was unquestionably inferior to many; and even in professional science, he could scarcely be considered as very profound, or very learned. He had disinclination to the pages of black letter law, which he sometimes censured, as the scholastic refinements of monkish ages; and, even for the common branches of technical science, the doctrines of special pleading, and the niceties of feudal tenures, he professed to feel little or no reverence. \* \* \* In short, there have been men, some thoroughly imbued with all the fine tinctures of classic taste; men of more playful and cultured imaginations; of more deep and accurate research; more varied and finished learning. But, if the capacity to examine a question, by the most comprehensive analysis; to subject all its relations to the test of the most subtle logic; and to exhibit them in perfect transparency to the minds of others—if the capacity to detect with an unerring judgment the weak points of an argument, and to strip off every veil from sophistry or error;—if the capacity to seize, as it were, by intuition, the learning and arguments of others, and instantaneously to fashion them to his own purposes—if, I say, these constitute some of the highest prerogatives of genius, it will be difficult to find many rivals or superiors to Mr. Dexter. In the sifting and comparison of evidence, and in moulding its heterogeneous materials into one consistent mass, the bar and the bench have pronounced him almost inimitable."—*Remarks upon Dexter's death, in 1816.*



## DEXTER ON WASHINGTON

"With patriotic pride we review the life of Washington and compare him with those of other countries who have been pre-eminent in fame. Ancient and modern names are diminished before him. Greatness and guilt have too often been allied; but his fame is whiter than it is brilliant. The destroyers of nations stood abashed, at the majesty of his virtue. It reproved the intemperance of their ambition, and darkened the splendor of victory. The scene is closed, and we are no longer anxious, lest misfortune should sully his glory; he has traveled on to the end of his journey, and carried with him an increased weight of honor; he has deposited it safely, where misfortune cannot tarnish it, where malice cannot blast it. Favored of Heaven, he departed, without exhibiting the weakness of humanity. Magnanimous in death, the darkness of the grave could not obscure his brightness."

—*From Dexter's Resolutions of Condolence on the Death of Washington, as he was chairman of a committee of three, Dexter, Ross and Read, Dec. 19, 1799.*

## SOUND, NOT SENSE IN ORATORY

Of certain orators Dexter said: "They have the happy talent of keeping the sound agoing after the sense has gone."

## THE BIBLE

KENT: "The general diffusion of the Bible is the most effectual way to civilize and humanize mankind; to purify and exalt the general system of public morals; to give efficacy to the just precepts of international and municipal law; to enforce the observance of prudence, temperance, justice and fortitude; and to improve all the relations of social and domestic life."

SIR WM. JONES: "The Bible contains more true sublimity, more exquisite beauty, more pure morality, more important history, and finer strains of poetry and eloquence, than can be collected from all other books, in whatever age or language they may have been written."

DANIEL WEBSTER: "Philosophical argument, especially that drawn from the vastness of the universe, in comparison with the apparent insignificance of this globe, has sometimes shaken my reason for the faith that is in me; but my heart has always assured and reassured me that the gospel of Jesus Christ must be a divine reality. \* \* \* I believe that the Bible is to be understood and received in the plain and obvious meaning of its passages; for I cannot persuade myself that a book intended for the instruction and conversion of the whole world should cover its true meaning in any such mystery and doubt that none but critics and philosophers can discover it. \* \* \* I have read the Bible through many times, and now make it a practice to read it through once every year. It is a book of all others for lawyers, as well as divines; and I pity the man who cannot find in it a rich supply of thought and of rules for conduct."

J. Q. ADAMS: "In what light soever we regard the Bible, whether with reference to revelation, to history, or to morality, it is an invaluable and inexhaustible mine of knowledge and virtue." \* \* \*

"I speak as a man of the world to men of the world; and I say to you, Search the Scriptures! The Bible is the book of all others, to be read at all ages, and in all conditions of human life; not to be read once or twice through, and then laid aside, but to be read in small portions of one or two chapters every day, and never to be intermitted unless by some overruling necessity. \* \* \* So great is my veneration for the Bible, that the earlier my children begin to read it the more confident will be my hopes that they will prove useful citizens to their country and respectable members of society."



## DANIEL S. DICKINSON (1800-1866), New York

### PRACTICAL AGRICULTURE

"Practical agriculture is coeval with the history of man. The children of Israel, on coming to the possession of the fair land of Canaan, after wandering in the wilderness forty years, addressed themselves to its cultivation. When the prophet Elijah passed by and cast his mantle upon Elisha, he found him plowing in the field, with twelve yoke of oxen before him, himself with the twelfth; and the servants and oxen of the affluent Indumean were engaged in the same pursuit when they fell prey to the rapacity of the Sabeans. Many of the most interesting and poetic incidents of the Scriptures are touching the harvesting and glean- ing of fields, and rural occupations, and its pages are replete with descrip- tions of the management of flocks and herds, sheep shearing, threshing floors, and the enjoyments of husbandry.

"The mind of the professional man is engaged with his particular calling, runs in grooves fashioned by his pursuit. \* \* \* The merchant is buried in commerce, and the mechanic is absorbed with inventions and improvements. But the farmer, devoted to no theories, and wedded to no systems, with the ample volume of Nature constantly before him, unfolding her mysteries and spreading out her allurements, the deep fountains of knowledge stand open, and all combines to inspire him with the love of the sublime and beautiful, to store his mind with that practical, useful knowledge which energizes the man's nature to loftier and nobler pursuits."

—*Daniel S. Dickinson, N. Y. (1800-1866). To the Queens County Agricultural Society, N. Y., Oct., 1843.*

He was a very brilliant lawyer, Judge of the N. Y. Supreme Court in 1837; refused a judgeship on the N. Y. Court of Appeals; United States Senator from 1844 to 1850.

### THE BIBLE

"The Bible is a history, the narrative of a multitude of miraculous facts, which skepticism has often challenged, but never disproved—a poem moral and didactic—a repertory of divine instinct—a collection of the deepest intuitions of truth, beauty, justice and holiness; destined to command, to charm, to sublimate the mind of man; which for ages has been exposed to the keenest investigation—to a fire which has consumed contemptuously the mythology of the Iliad, the husbandry of the Georgic, the historical relations of Livy, the fables of the Shasters, the Talmud; and the Koran, the artistic merit of many a popular poem, and the authority of many a work of philosophy and science."—*Daniel S. Dickinson.*

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### KNOWLEDGE

"Pleasure is a shadow, wealth is vanity, and power a pageant; but knowledge is ecstatic in enjoyment, perennial in fame, unlimited in space, and definite in duration. In the performance of its sacred offices, it fears no danger, spares no expense, looks into the volcano, dives into the ocean, perforates the earth, wings its flight into the skies, explores sea and land, contemplates the distant, examines the minute, comprehends the great, ascends to the sublime—no peace too remote for its grasp, no height too exalted for its reach."

—*DeWitt Clinton, of N. Y., 1760-1828.*



## JOHN F. DILLON (1831-1914), New York

### TRIAL BY JURY

"It (the trial by jury) is a cherished right. It is protected from legislative overthrow by the National and by all our State constitutions. It is a historical and essential part of the free institutions of England. It equally belongs to our own free institutions. It springs out of them and tends to support and perpetuate them. It is my firm conviction that the love of liberty, of liberty regulated by law, and a general and habitual reverence for and obedience to the Constitution and the laws, are the only ties which can surely hold together our vast republic. These are the sources of our greatness and the foundation of our hopes. Let us never forget the truth so nobly expressed by Burke: 'Justice is itself the great standing policy of civil society; and any eminent departure from it, under any circumstances, lies under the suspicion of being no policy at all.' "

### WHAT IS A LEGAL RIGHT?

"Nothing is a legal right unless it implies a capacity residing in one person of controlling, with the assent and assistance of the State, the actions of others; and that which gives validity, or at least effect, if not existence, to a legal right, is in every case the force which is lent to it by the State. Duty is the correlative of right, and duty in a legal sense implies sanction or amenability to sanction, which sanction it is the function of the judicial tribunals to apply and enforce. Whatever rights and duties they thus recognize and enforce are legal rights and duties, and for practical purposes none others fall within the domain of the law so far as lawyers and courts are concerned. A moral right, if disregarded, will be viewed with public censure or disapprobation, but that is all; a legal right, however, if disregarded, will be enforced by the public will of the organized society which is called the State."

—*The Laws and Jurisprudence of America. P. 12.*

### THE COMMON LAW

"The common law is the basis of the laws of every State and Territory of the Union, with comparatively unimportant and gradually waning exceptions. And a most fortunate circumstance it is, that, divided as our territory is into so many States, each supreme within the limits of its power, a common and uniform general system of jurisprudence underlies and pervades them all; and this quite aside from the excellences of that system, concerning which I shall presently speak. My present point is this: That the mere fact that one and the same system of jurisprudence exists in all of the States is of itself of vast importance, since it is a most powerful agency in promoting commercial, social, and intellectual intercourse, and in cementing the national unity. This view is so important that I must take leave to dwell upon it for a moment.

"Jurisprudence, as I have heretofore pointed out, is not something in the air—something lifted up above and abstracted from the life of men—but an eminently practical science, which has to do directly with the conduct and relations of men, and with their conduct and relations as members of a particular State. It therefore necessarily partakes of a national character, as, for example, Roman jurisprudence, English jurisprudence, etc., referring thereby to the principles and character of the distinctive legal systems of these several peoples. The Roman law affiliates the legal systems of continental Europe and gives them



a common, an organic character. So the common law affiliates the legal systems of England and the United States, and also the legal system of each State with the legal system of all the other States of the Union. It makes them all akin. It gives them an organic character. It is a living bond of union, since it is the cause and medium of a constant and active intercommunication and intercourse, making the people of the whole country neighbors. The legal systems of our forty-four States have not only the same general character but they are substantially uniform and identical. So completely is this the case that I speak from my observation and experience when I state that a thoroughly educated and trained lawyer of any one State, having access to the statutes and reports, is competent to deal with, and in fact our lawyers daily do deal with, questions and cases arising in and governed by the laws of any of the other States."—*The Laws and Jurisprudence of America*. pp. 155-7.

### THE IDEAL LAWYER

"The true conception—ideal if you please, of the lawyer, is that of one who worthily magnifies the nature and duties of his office; who scorns every form of meanness or disreputable practice, who, by unwearied industry, masters the vast and complex learning and details of his profession; but who, not satisfied with this, studies the eternal principles of justice as developed and illustrated in the history of the law, and in the jurisprudence of other times and nations, so earnestly that he falls in love with them and is thenceforward not content unless he is endeavoring by every means in his power to be not only an ornament but a help unto the laws and jurisprudence of his State and Nation."

—*Before Nat'l Bar Ass'n, at Saratoga Springs N. Y., Aug. 22, 1894.*

### THE IDEAL JUDGE

"The true ideal of a Judge is no longer a figure with bandaged eyes, but rather the figure of one who carries in his upraised hand the torch of truth from on high, and who, throughout the arguments of counsel and in the maze and labyrinth of adjudged cases, walks ever with firm step in the illumination of its constant and steady flame."

—*Suggested by "The Statue of Liberty" in N. Y. Bay.*—"Laws and Jurisprudence of England and America", 188.

### IDEAL JUSTICE

"The most satisfactory ideal I have ever been able to form of justice is embodied in the picture of a judge courageous enough 'to give the devil his due,' whether he be in the right or in the wrong."

—"Laws and Jurisprudence of England and America," 188.

### BLACKSTONE

"If in the presence of the cares and toils which are the common lot of the successful lawyer, you will make it a point every year once to read the 'Commentaries of the Laws of England' by Sir William Blackstone you will thank me as often as you shall complete the reading for the advice I have thus ventured to give."

—"Laws of Jurisprudence of England and America." 312-13.



## CHARLES DOE (1830-1897), New Hampshire.

### FORBIDDING OF THE KILLING OF ANIMALS DESTROYING PROPERTY—UNCONSTITUTIONAL. "THE MINK CASE."

"To hold, in this case, that the geese should have been driven away from their home, would be equivalent to holding that they should have been killed. The doctrine of retreat would leave them a right to nothing but life in some place inaccessible to minks, where life might be unremunerative and burdensome. But that doctrine being irrelevant when the aggressor is not shielded by the inviolability of the human form and the sacred quality of human life, the geese were not bound to retreat. As against the minks, they had a right not only to live, but to live where the defendant chose, on his soil and pond, and to enjoy such food, drink and sanitary privileges as they found there, unmolested by these vermin, in a state of tranquility conducive to their profitable nature. And it was for the jury to say, not whether he could have driven them away from the minks, but whether his shot was reasonably necessary for the protection of his property considering what adequate and economical means of permanent protection were available, the legal valuation of vermin life, and the disturbance and mischief likely to be wrought upon his real and personal estate if any other than a sanguinary defense were adopted.

"The plaintiff's claim, if upheld, would reach far beyond an unjust judgment taking from this defendant the sum of forty dollars and costs. It would establish a principle of law novel in theory and practice, subversive of the authorities, extensive in its operations and pernicious in its effect. If the defendant's geese were bound to retreat before these vermin, it follows that horses, cattle, sheep, swine, and poultry are bound, at common law, to retreat, and be driven by their owners from their own land, if retreat is possible, regardless of course or distance, before every dog that chooses to attack them: If A's dog besets B's house, and exhibits an inclination to attack the occupants when they come out, they must remain shut up till he sees fit to raise the siege; friends who would come to their relief can do nothing but retreat; and, the law of retreat not being limited to any particular lines, every person, on his own land or in the highway, menaced by another's dog, is bound not to use a deadly weapon, if he can escape by taking refuge in a tree and remaining there an indefinite period; and, in many ways, the human industries and liberties of the country are subject to interruptions, hindrances, and restrictions not heretofore judicially established or practically acknowledged. In a practical view, the perils, inconveniences, and damages caused by perverse and unruly animals, under such a system of brutish dominion assume a serious aspect. In a legal view, the expansion of the duty of retreat is a contraction of the natural and constitutional right of defending person and property."

—*Aldrich v. Wright*, 53 N. H. 398 (1873).—*The verdict of the lower court was set aside by Judge Doe.*

"In *Aldrich v. Wright*, N. H., the judge, holding that a statute prohibiting, under penalty, the killing of minks could not constitutionally apply to a case where the person accused of the killing acted in defense of his property. The opinion occupies 25 pages in the State Report, and was decided in 1873. His facetious discussion of the reciprocal rights, duties and liabilities of owner, geese and minks has to some appeared frivolous. When Judge Doe was suggested as a suitable successor to Mr. Justice Clifford upon the U. S. Supreme Court, Senator Geo. F. Hoar showed the opinion to several Senators as an argument against Judge Doe's fitness. Yet, the Supreme Court of Mass., in



Wesbelt v. Wilbur, 177 Mass., 201, cited the case with approval, Judge O. W. Holmes adopting the principle of the case as a canon of the common law."—8 *Great American Lawyers*, 293.

### PRECEDENT

"As there was a time when no precedents existed, everything that can be done with them, can be done without them."—*Charles Doe, in Concord Co. v. Robertson*, 66 N. H., 18.

### RES ADJUDICATA

"The maximum which taken literally requires courts to follow decided cases is shown by the thousands of overruled decisions to be a figurative expression requiring only a reasonable respect for decided cases."

—*Charles Doe, in Lisbon v. Lyman*, 49 N. H., 602.

### SPECULATING AND EXPERIENCE IN APPLYING EVIDENCE

"When we want to know whether a certain horse is skittish or is capable of a certain speed, whether a certain substance is poisonous and destructive of animal or of vegetable life, whether certain materials are of a certain strength, whether a certain field of a certain kind of soil is likely to produce a certain kind of amount of crop, whether a certain man or brute or machine is likely to perform a certain kind or amount of work, or whether anything can be done or is likely to be done, one way is to speculate about it, and another way is to try it. The law is a practical science, and when it is appealed to direct what means shall be used to find out whether a certain pile of lumber is likely to frighten horses, if any one asserts that, on this subject, the law prefers speculation to experience, abhors, actual experiment and delights in guesswork, the person advancing such a proposition takes upon himself the task of maintaining it upon some legal rule, distinctly stated by him and well established by the authorities. Such a proposition is not sustained by the reason of the law. It is sustained by nothing that can be justly called principle. By what technical rule, at war with reason and principle, is it supported?"

"The only rule relied upon to exclude experimental knowledge in such a case as this is the rule requiring the evidence to be confined to the issues,—that is, to the facts put in controversy by the pleadings, prohibiting the trial of collateral issues—that is, of the facts not put in issue by the pleadings, and excluding such evidence as tends solely to prove facts not involved in the issues. This rule merely requires evidence to be relevant. It merely excludes what is irrelevant. It is a rule of reason, and not an arbitrary or technical one, and it does not exclude all experimental knowledge. A fact as relevant, and so directly involved in the issue of guilty or not guilty, between these parties, as any fact in controversy, was the likelihood or probability of the lumber frightening ordinary horses. There was nothing collateral—that is, nothing irrelevant in that."

—*Charles Doe, in Darling v. Westmoreland*, 52 N. H., 405.



DANIEL DOUGHERTY (     -     ), Pennsylvania

### AN ADDRESS TO PATRIOTS

"Burn and destroy the idols of party you have worshipped; banish politics from the municipality and county, limiting it to questions affecting principles in the State and Nation; place competency and integrity at every part of the public service; adorn your courts with judges worthiest to wield the attributes of God; elect representatives who will reflect the majority of a free people; send to the Senate statesmen whom history will immortalize and nations make their models. Americans, the countless generations who dwell within the confines of this continent from now to eternity confide their liberties to you.

"Uphold them, I implore you, with a patriotism that will never tire; guard them with a vigilance that will never sleep."

### SUCCESS AT THE BAR

"To become a thorough lawyer one must love the law as a science and devote himself almost entirely to it. Constant application, untiring patience, common sense and a logical mind are requisites. High character is essential to permanent success as an advocate. The first may be a student, the other must be a man of the world. He must have knowledge of human nature as well as law. Sergeant Talfourd lays great stress on tact. He should leave nothing to chance—should master his case in details. His brief should be complete, with a precedent for every point. He should adapt himself to unforeseen contingencies. Despite what English barristers say he should examine his own witnesses against him. He should, for the time, become absorbed in the cause of his client, never forgetting, however, that he owes a duty to the court. These and fifty other qualities which no one advocate ever had, might be mentioned. The possession even of a few, will make a successful trial lawyer."

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### WHAT THE BIBLE IS

"The Bible is not a book but a library; it took in its formation over a thousand years; the books in which it was composed were written in different languages, by men of different temperaments, but living centuries apart; in studying and teaching it one must take account of the time in which the people to which, and the temperament of the men by whom each book or teaching was uttered. My legal and historical studies had further prepared me for the view of the Bible which now modern scholarship generally accepts. History is always composed of pre-existing materials, and these materials are often woven by the writer into his narrative. It was not unnatural to suppose that the Bible histories were composed in the same manner, and that there were incorporated in them, along with documents and well-attested legends, some popular tales and current folk-lore. I had learned from Sir Henry Maine that the origin of law is a general custom; that custom is formulated in specific decrees, imperial or legislative, then the decrees are organized into a code."

—*Lyman Abbott's "Reminiscences," 460-1.*

Abbott was for six years a practicing lawyer. He and his brothers—Austin and Benjamin, wrote several law-books, under the name of "Benauly,"—"Ben" (jamin), "Au" (stin), and "Ly" (man).



## STEPHEN A. DOUGLAS (1813-1861), Illinois

### STEPHEN A DOUGLAS'S PREDICTION

"I was quite unwilling to enter into a treaty stipulation with any European power in respect to this continent, that we could not do in the future whatever our duty, interest, honor and safety might require in the course of events. I am not prepared to prescribe limits to the area over which democratic principles may safely spread. \* \* \* You may make as many treaties as you please to fetter the limits of this giant republic, and she will burst them all from her and her course will be onward to a limit which I do not venture to proscribe. \* \* \* What is the use of your guarantee that you will never erect any fortifications in Central America, never annex, occupy or colonize any portion of that country? How do you know that you can avoid doing it? If you make the canal, I ask you if American citizens will not settle along its line; whether they will not build up towns at each terminus? And I ask you how many years you think will pass before you will find the same necessity to extend your laws over your own kindred that you found in the case of Texas?"

—*Remarks made in the U. S. Senate, when negotiating the Clayton-Bulwer treaty. Douglas tho't this country should not give a mortgage on the future.*

Douglas said he had a conversation with Sir Henry Bulwer. "I told him," said Douglas, to Bulwer's assertion that it was a fair treaty, "that it would be fair if they would add one word to the treaty, so that it would read that neither Great Britain nor the U. S. should ever occupy or hold dominion over Central America or *Asia*." But answered he,—"You have no interest in *Asia*?" "No," answered I, "And you have none in Central America."

### THE COMMON LAW

"The common law is a beautiful system, containing the wisdom and experience of ages. Like the people it rules and protected, it was simple and crude in its infancy, and became enlarged, improved and polished as the nation advanced in civilization, virtue and intelligence. Adapting itself to the condition and circumstances of the people and relying upon them for its administration, it necessarily improved as the condition of the people was elevated. \* \* \* But if we are to be restricted to the common law as it was enacted at Forth James, rejecting all modifications and improvements which have been made by practice and statutes, we will find that system entirely inapplicable to our present conditions, for the simple reason that it is more than two hundred years behind the age. \* \* \* The inhabitants of this country always claimed the common law as their birthright, and at an early period established it as the basis of their jurisprudence. Slight changes and modifications were found necessary, and consequently adopted by common consent from time to time to adapt it to our own peculiar institutions and the habits and customs of the people. These changes, modifications and customs having for a long course of years been acquiesced in by the people and sanctioned by the courts, have acquired the force of law and become incorporated into and made part of the common law of the land. The legislation of the territory and of our state was adopted with reference to the law as it then existed in the country."

—*In Penny. v. Little, 3 Scammon's Reports, 301.*



"Within ten years," says Clark E. Carr, in his *Life of Douglas*, p. 2, "after Douglas walked into Winchester, Ill., a friendless boy of 20, with 37½ cents in his pocket (1833), he was admitted to the bar (1834), immediately becoming a successful lawyer; had been a member of the Ill. Legislature (1836); had been Prosecuting-Attorney (1835); had been Register of the Land Office at Springfield (1837); had been Secretary of State of Ill. (1840); had been Judge of the Supreme Court of Ill., presiding upon the bench (1841-3); was on his way to Washington to take his seat in the Lower House of Congress to which he had been elected (1842). When his congressional term expired, he was re-elected, and then re-elected again, each time by increased majorities. When about to enter upon his 3rd term in the House, he was elected to the U. S. Senate for six years (1846); was re-elected for another term, practically without opposition. Six years later he was confronted by Lincoln in the great debates (1858); he was victorious, and was re-elected to a 3rd term; upon this he served but little over 2 years, when he died, at 48 years of age."

### TAUNTED SEWARD'S "HIGHER LAW"

Debating with Seward in the U. S. Senate, Douglas exclaimed: "Your oath to support the Constitution binds you to every line, word and syllable of the instrument. You have no right to say that any given clause is in violation of the Divine law, and that, therefore, you will not observe it. The man who disobeys any one clause on the pretext that it violates the Divine law, violates his oath of office."

In debate with Lincoln he said:

"Sustain the Constitution of my country as our fathers have made it. I will yield obedience to the laws, whether I like them or not, as I find them on the statute book. I will sustain the judicial tribunals and constituted authorities in all matters within their jurisdiction as defined by the Constitution."

But in the dark days of 1861, altho Ill. had voted against him heavily in the Presidential contest, he returned to something like idolatry of the son of whom she had always been proud when he came back to her with these inspiring words of patriotic fervor upon his lips:

"When we shall have again a country with a U. S. flag floating over it and respected on every inch of American soil, it will be time enough to ask who had brought all this upon us. It is a sad task to discuss questions so fearful as civil war, but sad as it is, bloody and disastrous as I expect it will be, I express it as my conviction before God that it is the duty of every American citizen to rally around the flag of his country. Every man must be for the U. S. or against it. There can be no neutrals in this war, only patriots and traitors."

### TILT WITH JOHN QUINCY ADAMS

Mr. Adams: "I never said that our title was good to the Rio del Norte from the mouth to its source."

Mr. Douglas: "I know nothing of the gentleman's mental reservations. If he means, by his denial, to place the whole emphasis on the qualifications that he did not claim that river as the boundary '*from its mouth to its source*,' I shall not dispute with him on that point. But if he wishes to be understood as denying that he ever claimed the Rio del Norte, in general terms, as our boundary under the Louisiana treaty, I can furnish him with an official document, over his own signature, which he will find very embarrassing and exceedingly difficult to explain. I allude to his famous dispatch as secretary of state, in 1819, to Don Onís, the Spanish minister. I am not certain that I can prove his handwriting, for the copy I have in my possession I find printed in the *American Satet*



Papers, published by order of Congress. In that paper he not only claimed the Rio del Norte as our boundary but he demonstrated the validity of the claim by a train of facts and arguments which rivet conviction on every impartial mind and defy refutation."

Mr. Adams: "I wrote that dispatch as secretary of state, and endeavored to make out the best case I could for my own country, as it was my duty; but I utterly deny that I claimed the Rio de Norte as our boundary in its full extent. I only claimed it a short distance up the river, and then diverged northward some distance from the stream."

Mr Douglas: "Will the gentleman specify the point at which his line left the river?"

Mr. Adams: "I never designated the point."

Mr. Douglas: "Was it above Matamoras?"

Mr. Adams: "I never specified any particular place."

Mr. Douglas: "I am well aware that the gentleman never specified any point of departure for his northward line, which, he now informs us, was to run a part of the way on the east side of that river; for he claimed the river as the boundary in general terms, without any qualifications. But his present admission is sufficient for my purposes, if he will only specify the point from which he then understood or now understands that his line was to have diverged from the river. I have heard of this line before, and know with reasonable certainty its point of departure. It followed the river to a place near the highland—certainly more than 100 miles above Matamoras; consequently, if we adopt that line as our present boundary, it will give us Point Isabel and General Taylor's camp opposite Matamoras, and every inch of ground upon which an American soldier has ever placed his foot since the annexation of Texas to the Union. Hence my solicitude to extract an answer from the venerable gentleman (then 72—two years before his death) to interrogatory whether his line followed the river any distance above Matamoras, and hence, I apprehend, the cause of my failure to procure a response to that question. If he had responded to my inquiry, his answer would have furnished a triumphant refutation of all the charges which he and his friends have made against the President for ordering the army of occupation to its present position. I am not now to be diverted from the real point in controversy by a discussion of the question whether the Rio del Norte was the boundary to its source. My present object is to repel the calumnies which have been urged against our government, to place our country in the right and the enemy in the wrong, before the civilized world, according to the truth and justice of the case. I have exposed these calumnies by reference to the acts and admissions of our accusers, by which they have asserted our title to the full extent that we have taken possession. I have shown that Texas always claimed the Rio del Norte as her boundary during the existence of the republic, and that Mexico on several occasions recognized it as such in the most direct and solemn manner. The President ordered the army no farther than Congress had extended our laws. In view of these facts, I leave it to the candor of every honest man whether the executive did not do his duty, and nothing but his duty, when he ordered the army to the Rio del Norte. Should he have folded his arms, and allowed our citizens to be murdered and our territory to be invaded with impunity? Have we not forborne to act, either offensively or defensively, until our forbearance is construed into cowardice, and is exciting contempt from those toward whom we have exercised our magnanimity? We have a long list of grievances, a long catalogue of wrongs to be avenged. The war has commenced; blood has been shed; our territory invaded; all the act of the enemy."

—*From debate in the House of Representatives, in May, 1846, on the Mexican War.*



## SCHOULER'S CHARACTERIZATION

"Douglas had a small compact frame, whence issued a surprisingly stentorian voice, and his type of eloquence at once startled the House of Representatives by its novelty. As he warmed up in speech, his grave face became convulsed, his gesticulation frantic, and, while roaring and lashing about with energy, he would strip off his cravat and unbutton his waistcoat to save himself from choking, until his whole air and aspect as he stood at his desk was that of a half-naked pugilist hurling defiance at the presiding officer. But all this gave his person that picturesqueness which goes halfway towards making one a figure in public life."

—4 *Schouler's U. S. History*, 452.

## PATRIOTISM

"Patriotism emanates from the heart; it fills the soul; it inspires the whole man with a devotion to his country's cause, and speaks and acts the same language. America wants no friends, acknowledges the fidelity of no citizen, who, after war is declared, condemns the justice of her cause and sympathizes with her enemies."

—From speech *'On the Boundary between Texas and U. S.'*

## JAMES FORD RHODES ON DOUGLAS

"His first political speech gained him the title of the 'Little Giant'; the name was intended to imply the union of small physical with great intellectual stature. Yet he was not a student of books, altho a close observer of men. He lacked refinement of manner; was careless of his personal appearance, and had none of the art and grace that go to make up the cultivated orator. (John Quincy Adams at his appearance in the House, as his celebrated diary records) But Douglas took on quickly the character of his surroundings, and in Washington society he soon learned the ease of a gentleman and acquired the bearing of a man of the world. He was a great friend of the material development of the West, and especially of his own State, having broad views of the future growth of his section of the country. He vied with Cass in the dislike of England; believed in the manifest destiny of the U. S.; thought that conditions might arise under which it would become our bounden duty to acquire Cuba, Mexico, and Central America. He was called the representative of young America, and his supporters antagonized Cass as the candidate of old-fogyism. His adherents were aggressive and for months had made a vigorous canvass on his behalf. A Whig journal (N. Y. Tribune) ventured to remind Douglas that vaulting ambition overleaps itself, but added, 'Perhaps the little judge never read Shakespeare, and does not think of this'."—1 *Rhodes History of the U. S.*, pp. 244-5.

## WHY DOUGLAS FAILED

"He failed of the highest fame and of the affectionate regard of posterity because he lacked the insight into moral questions and the political idealism which springs therefrom, which the statesman ranked among the immortals must always have. Although he always wore the party name and ranked himself under the party banner of Democracy, a true Democrat, in the larger sense of the word, Douglas was not. The brotherhood of man, the federation of the world, the sanctity of natural rights, were ideas foreign to his mind and thought. Lincoln, who never bore the name of Democrat, Trumbull, who repudiated it when it bore the connotation of pro-slaveryism, were really Democrats, but not Douglas. His strongest political belief was in nationalism—patriotic and sincere



nationalism—but nationalism imperialistic and almost Chauvinist. He believed in autonomy for American communities; he cared but little what became of the rest of the world save as it might feed America's greatness. His strongest impress, perhaps, therefore, was made on the Democrats in name, who voted with him and for him, and whose general practical cast of thought he expressed and illustrated in action."

—*Edward Osgood Brown, Justice of Ill. Appellate Court, 6 Gt. Am. Lawyers, 518-19.*

### JUSTIFICATION OF JACKSON'S COURSE

"But, sir, for the purposes of General Jackson's justification, I care not whether his proceedings were legal or illegal, constitutional or unconstitutional, with or without precedent, if they were necessary for the salvation of the city. And I care as little whether he observed all the rules and forms of court, and technicalities of the law, which some gentlemen seem to consider the perfection of reason and the essence of wisdom. There was but one form necessary on that occasion, and that was to point cannon and destroy the enemy. The gentleman from New York (Mr. Barnard) to whose speech I have had occasion to refer so frequently, has informed us that his bill is unprecedented. I have no doubt this remark is technically true according to the most approved forms. I presume no case can be found on record, or traced by tradition, where a fine imposed on a general for saving his country at the peril of his life and reputation has ever been refunded. Such a case would furnish a choice page in the history of any country."

—*Douglas's speech at Washington.*

The bill passed both houses of Congress, and received the approval of the President. This was in 1844.—*The Author.*

Jackson and Douglas met soon after at a barbacue given by the Democrats at Nashville, Tenn. Said Jackson:

"Are you the Mr. Douglas, of Illinois, who delivered a speech in Congress last winter on the bill to reimburse me the fine Judge Hall imposed on me?"

"I made a speech on the bill," was the modest reply.

"Then take a seat beside me on this lounge. I want to thank you; these other gentlemen can wait." And then the Old Hero told Douglas how that speech had removed the only doubt that had ever oppressed his mind, and made smooth his pathway to the grave, (he died that year, 1845); that his friends, good lawyers, had always contended that he had violated the Constitution of his country, though it was admitted it was necessary to save the city. "I never could understand it," he continued; "It was a mystery to me, and I was in great doubt until I read your speech, completely vindicating my action and setting my mind at rest. I have it here preserved between the leaves of the Bible. Young man, I thank you. You have given me happiness." Douglas's eyes were suffused with tears, his heart was filled with emotion and he was incapable of utterance. He could only press the old hero's hand, and this was the only meeting and parting of Jackson and Douglas."

—*Essays of Savoyard, 260-62.*

### AGAINST REPUDIATION BY ILLINOIS

"The State of Illinois acted nobly, though it was poor. It had borrowed money like Pennsylvania for the purpose of carrying out internal improvements. When the inhabitants of rich Pennsylvania set the example of repudiation, many of the poorer States wished to follow in their footsteps. As every householder had a vote, it was easy, if they were dishonest, to repudiate their debts. A convention was called at Springfield, the Capital, and the repudiation ordinance was offered to the meeting.



It was about to be adopted, when it was stopped by Stephen A. Douglas. He was lying sick at his hotel, when he desired to be taken to the convention. He was carried on a mattress, for he was too weak to walk, lying on his back, he wrote the following resolution, which he offered as a substitute for the repudiation ordinance:

“ ‘Resolved that Illinois will be honest, although she never pays a cent.’ The resolution touched the honest sentiment of every member of the convention, and was adopted with enthusiasm. The canal bonds immediately rose. Capital and immigration flowed into the State; and Illinois is now one of the most prosperous States in America. She has more miles of railway than any of the other States. Her broad prairies are one great grain field, and are dotted over with hundreds of thousands of peaceful, happy homes. This is what honesty does.”

—*Samuel Smiles in 'Duty,' 70.*

### JUDGE ORRIN C. CARTER ON DOUGLAS

“Douglas passed the examination for admission to the bar before he was twenty-one. From 1834, the year of his admission, and 1841 when he became a member of the Ill. Supreme Court, he appeared in twelve cases, reported in 2nd and 3rd Ill. Reports. When he became a judge of the Supreme Court, he was less than twenty-eight years of age, and had not been admitted quite seven years. He wrote twenty-two opinions, while a member of that court, in the 4th, 5th and 6th Ill. Reports. There was little in any of these cases that tested his capacity as a jurist; enough, however, to justify the conclusion that had he given his life unreservedly to the legal profession he would have been known as an eminent lawyer and judge.

“He resigned as judge, after a little over two years on the bench, to run for Congress in June, 1843. It seems he appeared in but three cases before that tribunal, after he left the Supreme Bench. A public prosecutor before twenty-two, leading counsel in some of the most important cases heard in the State, during the next few years, a Supreme Court Judge at twenty-seven, Douglas's career at the Illinois bar has few parallels for brilliancy in the annals of history. He was shrewd, keen, analytical, bold and aggressive; a quick and ready debater, capable of thinking as well on his feet as after deliberation; marvelously suggestive and fertile as to resources. He rarely cited historical precedents, except from American politics. In that field his knowledge was comprehensive and accurate. Nobody knew when he read, yet he could refer to date, page, and volume with wonderful accuracy. He was without wit or humor; intensely practical; in no sense a dreamer or follower of ideals. He disregarded all the adornments of rhetoric.”

—*Orrin C. Carter, Judge Supreme Court of Illinois, 4 'Proceedings Mississippi Valley Hist. Ass'n', for 1910-11, pp. 212-240.*

### HENRY WATTERSON ON DOUGLAS

“Stephen Arnold Douglas was the Charles James Fox of American politics. He was not a gambler as Fox was. But he went the other gaits and was possessed of a sweetness of disposition which made him, like Fox, loved where he was personally known. No one could resist the *bon homie* of Douglas. He was a Green Mountain boy. He was born in Vermont. As Seargent Prentiss had done, he migrated beyond the Alleghanies before he came of age, settling in Illinois as Prentiss had settled in Mississippi to grow up into a typical Westerner as Prentiss into a typical Southerner. \* \* \* Had Judge Douglas lived he would have been Mr. Lincoln's main reliance in Congress. As a debater his resources and powers were rarely equaled and never surpassed. His personality,



whether in debate or private conversation, was attractive in the highest degree. He possessed a full, melodious voice, convincing fervor and ready wit. He had married for his second wife the reigning belle of the National Capital, a great-niece of Mrs. Madison, whose very natural ambitions quickened and spurred his own. \* \* \* He has now lain in his grave nearly sixty years. Upon the legislation of his time, his name was writ in water and then in blood. He received less than his desert in life, and the historic record has scarcely done justice to his merit. He was as great a party leader as Clay. He could hold his own with Webster and Calhoun. He died a very poor man, though his opportunity for enrichment by perfectly legitimate means were many. It is enough to say that he lacked business instinct and set no value on money; scrupulously upright in his official dealings; holding his Senatorial duties above all price and beyond the suspicion of dirt. Touching the matter which involved a certain outlay in the winter of 1861, he laughingly said to me: 'I haven't the wherewithal to pay for a bottle of whisky, and shall have to borrow of Arnold Harris the wherewithal to take me home.'

"His wife was a glorious creature. Early one morning, calling at their home to see Judge Douglas, I was ushered into the Library, where she was engaged setting things to rights. My entrance took her by surprise. I had often seen her in full ball room regalia and in a becoming out-of-door costume, but as, in gingham gown and white apron, she turned, a little startled by my sudden appearance, smiles and blushes, in spite of herself, I thought I had never seen any woman so beautiful before. She married again the lover, whom gossip said, she had thrown over to marry Judge Douglas, and the story went, that her second marriage was not very happy."—1 *Henry Watterson's Autobiography*, 144-6.

#### REPLY TO FESSENDEN

"I wish the Senator from Maine (Mr. Fessenden) who delivered his maiden speech here to-night, and who made a great many sly stabs at me, had informed himself upon the subject before he repeated all his groundless assertions. I can excuse him, for the reason that he has been but a few days, and having enlisted under the banner of the abolition confederates, was unwise and simple enough to believe what they had published could be relied on as stubborn facts. He may be an innocent victim. I hope he can have the excuse of not having investigated the subject. I am willing to excuse him on the ground that he did not know what he was talking about, and it is the only excuse which I can make for him. I will say, however, that I do not think he was required by his loyalty to the abolitionists to repeat every disreputable innuendo about a Northern man with Southern principles. Ay, sir, I say foul insinuation. Did not the Senator from Massachusetts who first dragged it into this debate wish to have the public to understand that I was a Northern man with Southern principles? Was that the allusion? If it was, he availed himself of a cant phrase in the public mind, in violation of the truth of history. I know of but one man in this country who ever made it a boast that he was 'a Northern man with Southern principles,' and he was (turning to Sumner) your candidate for President in 1848."

The Kansas-Nebraska bill became a law, and the dogma of non-intervention was the central idea of the Democratic platform of 1856, upon which Buchanan and Breckenridge were elected President and Vice-President. But the Kansas-Nebraska bill did more; it vitalized the Republican party, and organized its future victory in 1860.—*The Author*.



## JOHN DUNNING, LORD ASHBURTON (1731-1783), England

### LORD SHELBURNE AND COLONEL BARRE

"I would add a word or two respecting my honorable friend below me (Colonel Barre). For the faithful and disinterested performance of his duty to this house, how has he been treated by some of his opponents? He has been called a dependent; I presume, alluding to the honor he enjoys in the friendship and intimacy of a certain noble lord, a member of the other house (Lord Shelburne). If that intimacy and friendship be a state of dependence, I am happy in classing myself among that noble lord's dependents. I will assure those, who have alluded to what they call dependence accompanied with perfect freedom. It is true my honorable friend has been honored with the noble lord's friendship for upward of twenty years; but I think I know the frame of mind and disposition of my honorable friend too well to be persuaded that he would purchase any man's intimacy upon any terms short of perfect equality and mutual confidence; and I think I may likewise add, that if any person should attempt to purchase the noble lord's friendship by mean or improper concessions, there is not a man on earth would more readily see thru or despise it. I know the noble lord to be a great private as well as public character. I know my honorable friend to possess a spirit of true independence. I am persuaded of the noble lord's great and acknowledged talents as a senator and a politician, and I can add, great as he may appear in a public light, that his private character is no less amiable and worthy of general admiration."

Says Chas. James Fox: "Dunning, in 1778 (then 47), was the greatest practicing lawyer then alive in England."

Dunning was retained in a criminal conversation case for the defendant, and to prove adultery, the lady's maid had been called, and had deposed to having seen the defendant in bed with his mistress. When it came Dunning's turn to cross-examine, he desired the witness, in a stern tone, to take off her bonnet, that he might have a full view of her face, and convince himself by her looks whether she was speaking the truth. Nothing daunted as she was a bold one, and handsome, she unhesitatingly removed her bonnet and Dunning began:

"Are you sure it was not your master that you saw in that conjugal capacity?"

"Perfectly sure."

"What! do you pretend to say you can be certain, when the head only appeared about the bed-clothes, and that enveloped in a night-cap?"

"Quite certain."

"You have often found occasion then to see your master in his night-cap?"

"Yes, very frequently."

"Now, young woman, I ask you, upon your oath, does your master occasionally go to bed with you?"

"Oh!" answered Toinette, nothing daunted, "that trial does not come on today, Mr. Slauberchops."—*Welesby's Lives of Eminent Judges*, 559.

Says Nathaniel Wraxall: "He neither delighted nor entertained his hearers; but he subdued them by his powers of argumentative ratiocination, which have rarely been excelled."



## DUNNING'S REPLY TO MANSFIELD

There is a celebrated reply in circulation of Mr. Dunning's to a remark of Lord Mansfield's, who curtly exclaimed of one of his legal propositions: "Oh, if that be law, Mr. Dunning, I may burn my law-books." "Better read them, my lord," was the sarcastic and appropriate rejoinder.

—*Chas. Phillips*, 'Curran and His Contemporaries,' 48.

## WRAXALL ON DUNNING'S UGLY APPEARANCE

"Never, perhaps, did nature inclose a more illuminated mind in a body of meaner and more abject appearance. It is difficult to do justice to the peculiar species of ugliness which characterized his person and figure though he did not labor under any absolute deformity of shape or limb; a degree of infirmity, and almost of debility or decay, in his organs augmented the effect of his other bodily misfortunes; even his voice was so husky and choked with phlegm that it refused utterance to the sentiments which were dictated by his superior intelligence. (He died at 52.) \* \* \* But all these imperfections and defects of configuration were obliterated by the ability which he displayed. In spite of the monotony of his tones, and his total want of animation, as well as grace, yet so powerful was reason when flowing from his lips, that every murmur became hushed, and every ear attentive. It seemed, nevertheless, the acute sophistry of a lawyer, rather than the speech of a man of the world, or the eloquence of a man of letters and education. Every sentence, though admirable in itself, yet resembled more the pleading of the bar than the oratory of the senate."

## FUTURE OF THE PHILIPPINES

"I have no light or knowledge not common to my countrymen. I do not prophesy. The present is all absorbing to me, but I cannot bound my vision by the blood-stained trenches around Manila, where every red drop, whether from the veins of an American soldier or a misguided Filipino, is anguish to my heart; but by the broad range of future years, when the group of islands, under the impulse of the year just passed, shall have become the gems and glories of those tropical seas; a land of plenty and of increasing possibilities; a people redeemed from savage indolence and habits, devoted to the arts of peace, in touch with the commerce and trade of all nations, enjoying the blessings of freedom, of civil and religious liberty, of education and of homes and whose children and children's children shall for ages hence bless the American Republic because it emancipated and redeemed their fatherland, and set them in the pathway of the world's best civilization."

—*President William McKinley*, before 'Home Market Club,' Boston, Mass., Feb. 16, 1899.



## OLIVER ELLSWORTH (1745-1807), Connecticut

### THE COMMON LAW

“The common law of England we are to pay great deference to, as being a general system of improved reason, and a source from which our principles of jurisprudence have been mostly drawn. The rules, however, which have not been made our own by adoption, we are to examine and so far vary from them as they may appear contrary to reason or unadapted to our local circumstances, the policy of our law, or simplicity of our practice.”—*Wooster v. Parsons, Kirby's Reports, 110, 117.*

“Any cause that is fit for any court to hear is fit for any lawyer to present on either side.”—*Judge Ellsworth to Jeremiah Evarts.*

### CHARGE TO GRAND JURY

“Your duty may be deemed unpleasant, but it is too important not to be faithfully performed. To provide in the organization that reason shall prescribe laws, is of little avail, if passions are left to control them. Institutions without respect, laws violated with impunity, are, to a Republic, the symptoms and the seed of death. No transgression is *too small*, no transgressor *too great*, for animadversion. Happily for our laws, they are not written in blood, that we should blush to read them, or hesitate to execute them. They breathe the spirit of a parent, and expect the benefits of correction, not from *severity* but from *certainly*. Reformation is never lost sight of, till depravity becomes, or is presumed to be, incorrigible. Imposed as restraints here are, not by the jealousy of usurpation, nor the capriciousness of insensibility, but as the aids of virtue, and guards to rights, they have a high claim to be rendered efficient. Nor is this claim more heightened by the purity of their source, and the mildness of their genius, than by the magnitude of the interests they embrace. The national laws are the national ligatures and vehicles of life. Though they pervade a country as diversified in its habits as it is vast in extent, yet they give to the whole harmony of interest and unity of design. They are the means by which it pleases Heaven to make of weak and discordant parts one great people, and to bestow upon them unexampled prosperity, and so long as America shall continue to have one will, organically expressed and enforced, must she continue to rise in opulence and respect. Let the man or combination of men who, from whatever motive, oppose partial to general will, and would disjoint their country to the sport of fortune, feed their impotence and error. Admonished by the fate of Republics which have gone before us, we should profit by their mistakes. Impetuosity in legislation, and instability in execution, are the rocks on which they perished. Against the former, indeed, we hold a security, which they were ignorant of, by a representative instead of the aggregate, and by a distribution of the legislative power to maturing and balancing bodies, instead of the subjection of it to momentary impulse and the predominance of faction. Yet from the danger of inexecution we are not exempt. Strength of virtue is not alone sufficient, there must be strength of arm, or the experiment is hopeless. Numerous are the vices, and as obstinate the prejudices, and as daring as restless is the ambition, which perpetually hazard the national peace, and they certainly require that to the authority vested in the executive department there be added liberal confidence, and the increasing co-operation of all good citizens for its support. Let there be vigilance,



constant diligence, and fidelity for the execution of laws, of laws made by all and having for their object the good of all. So let us rear an empire sacred to the rights of man and commend a government of reason to the nations of the earth."

—*Part of Charge to Grand Jury, at Savannah, Ga., 1796. Brown's Life of Ellsworth, 246-7.*

### WEBSTER GOT HIS IDEAS FROM ELLSWORTH

Webster said he got his ideas of defending the Constitution, in his debate with Hayne and Calhoun, from Ellsworth's two speeches before the Connecticut Convention, called to ratify the Constitution.

—*Brown's Life of Ellsworth, 175.*

### POSITION IN ADOPTING CONSTITUTION

"Ellsworth found time and energy to enter into the discussion of the four subjects over which the first Congress divided with the greatest heat. These were, the revenue, the seat of government, the debt, and the bank. He championed Hamilton's bill for a tariff. 2nd, he took an eastern stand for the permanent seat of government—on the Susquehanna, as against any point further South—N. Y. as against Philadelphia. Was against the bill that finally passed, the trade between Hamilton and Jefferson to locate the Capital on the Potomac, in order to get a tariff revenue bill through and to assume by the government the State debts. Also favored Hamilton's scheme for a bank."

—*Brown's Life of Ellsworth, 204-5.*

### STANDING IN CONSTITUTIONAL CONVENTION

"Not more than two or three men can well be ranked above Ellsworth for true effectiveness in the Constitutional Convention."

—*Wm. G. Brown's Life of Ellsworth, 168.*

### REBUKED SAMUEL CHASE ON BENCH

"Mr. Justice Chase was sometimes wanting in the proper respect for his associates, and given to browbeating counsel; and on one occasion, Ellsworth, deeply provoked, took a severe method to show him his place. The incident occurred when they two were sitting in a Circuit Court at Philadelphia. Jared Ingersoll, of Philadelphia, of counsel in the cause, had hardly entered on his argument, when Judge Chase impatiently interrupted and told him that the point he was arguing was well settled and he need not argue it. Vexed and disconcerted, Ingersoll proceeded to a second head of the contention, only to be again interrupted, and told that he was wasting time. Mastering his anger, he began a third argument; and the third time, Chase interrupted him. The indignant attorney folded up his notes and took his seat. Ellsworth took out his snuff-box, tapped it with his finger, and with plenty of emphasis said to Mr. Ingersoll: 'The Court has expressed no opinion, sir, upon these points, and when it does, you will hear it from the proper organ of the court. You will proceed, sir, and I pledge you my word, you shall not be interrupted again.' (And he turned upon his overbearing associate a look that made him fairly quail in his seat.)"—*Brown's Life of Ellsworth, 243.*

### DEPRIVATIONS OF YOUTH

"Ellsworth walked each way as a young lawyer 10 miles to attend court. Studied for the ministry a year, four years after he began practice, at Hartford, Conn.; at 30 his docket contained as many as 1,000 cases.



Noah Webster, the lexicographer, who read law with him, in 1779, said Ellsworth, Wm. Samuel Johnson and Titus Hosmer were the 'three mighties' of the Connecticut bar. As a lawyer he achieved extraordinary success, amassing what was for his day a large fortune. Entered Yale in 1762, but graduated at Princeton, in 1766. Made judge of the Superior Court in 1784, and in 1785 became a member of the Supreme Court of Errors. Was chosen to represent Conn. with William Samuel Johnson and Roger Sherman, both 20 years his senior (he being but 42) as members of the Continental Congress in 1787, which met in Philadelphia. Madison and Wilson led the Nationalists, and Paterson, Lansing and Luther Martin the Federalists in the Convention. But Ellsworth was a compromiser and brought order out of chaos. He was a master of details, and secured representation of the States in the Senate, each being entitled to one vote, and the provision whereby all money bills should originate in the House, and the provision that the lower house should be represented on the basis of population. He was elected one of the first Senators of Conn., 1789-96, and as such drafted and defended the national judiciary bill, by which the system of the Federal Courts, almost as they are today, was enacted. He was specially and peculiarly fitted for that work, and he has, therefore, been called the 'father of the national judiciary.' In the Senate he was looked upon as Washington's personal spokesman, as the leader of the administration party. He was appointed in 1796, upon the resignation of Chief Justice John Jay, Chief Justice of the U. S. Supreme Court. 'Ellsworth,' said Adams, 'was the firmest pillar in Washington's administration in the Senate.' "

### HIS OPINIONS

"His opinions reveal a thorough, comprehensive knowledge of legal precedents and principles in their full historic perspective. Indeed, his citations and references are remarkably copious and varied, considering his brevity. His terseness and point are characteristic. He cuts away all superfluous verbiage, avoids figures of speech, and seizing with firm grasp the gist of the question, he states his conclusion in plain, clear, forcible words with no hesitation or uncertain tone. Far different in style was his associate, James Wilson. The latter, with that philosophic cast of mind natural to a Scotchman, would roll out his opinion in flowing, sonorous sentences, embellished with all the ornaments and erudition of the classroom. In the matter of argument there was also a striking contrast; Associate Justice James Iredell was noted for his close, logical reasoning, but Ellsworth would keep most of his mental processes to himself, and would express barely more than his conclusions, though at times in argumentative outline."

—*Frank Gaylord Cook, Vol. 1, 'Gt. Am. Lawyers,' 307.*



## THOMAS ADDIS EMMET (1764-1827), Ireland

### EXTORTED APOLOGY FROM PINKNEY

In the great cause of the *Nereide* (9 Cranch, 398), Pinkney and Emmet were opposed to each other. The case involved a novel question of international law—whether a neutral could lawfully lade his goods on board an armed vessel. Emmet was embarrassed by a contemporary decision of an opposite character on the point for which he contended by the English High Court of Admiralty, in the case of the “*Fanny*.” The case at bar involved millions of dollars. Pinkney in his argument took occasion to say that Emmet was imprisoned in Fort George, Scotland, and released therefrom, on condition that he would leave England and Ireland forever. Emmet had severely criticised the English decision. Such was his hatred for England that he made some little comments upon her maritime laws. This gave Pinkney an opportunity to make the allusion above referred to. “It is natural,” said he, “that the gentleman, whose arm has been raised to rebellion against the British government and his own sovereign, and who, for his treason was confined for several years in an English prison, should dislike the laws he himself had broken, especially as there is an eternal interdict to his return to the land of his birth.” Emmet in his reply said:

“And now, your Honors, I have done. I leave the further consideration of the case to my learned and distinguished associate, Mr. Dallas. But, before I take my seat, I ought, perhaps, in justice to myself, to make some reply to the personal allusions which my great opponent has deemed proper to make concerning myself; but this is a species of warfare in which it is my good fortune to have had little experience; it is one that I never waged. I am perfectly willing that my learned opponent shall have all the laurels he has sought to win in waging it. When I came to this country, I was a stranger, nay more, I was an exile from the land of my birth, as dear to me as the lifedrops in my heart, but no dearer than this glorious country of my adoption, in which I have found an asylum, and a home, and a welcome almost paternal; in whose courts of justice I have been warmly received as an advocate, from its bench and bar. Never, sir, until this day, have I experienced the least unkindness from my professional brethren. Your Honors, I appeal to you, have I done anything here today to merit a different treatment? I came here imbued with the deepest respect, let me say reverence, for the learning and eloquence of Mr. Pinkney and he is the last man from whom I should have expected personal observations of the kind to which this Court, this bar, and this audience have just listened. It is true I was two years within the walls of an English prison, because I dared lift my voice in a Court of Justice, in behalf of my countrymen on their way to the scaffold and the halter, for the same acts of patriotism that made this great Republic all she is. Should my opponent taunt me to this? He whose grand and sweeping eloquence receives its beauty from his own burning patriotism, should sympathize with the victims of oppression wherever found. For whom I have no indignant words, for I know that when a little reflection shall bring the events of this day before him, that generosity and chivalry which has ever made him a favorite in the court of foreign monarchs, and caused him to be loved at home, will bring before him the injustice he did me today, with the regrets which his noble nature knows how to feel keenly. Besides, I have been taught in early life never to return railing for railing. In conclusion, let me say that the gentleman has filled the highest office his country can bestow, at the Court of St. James, and that of the Emperor of Russia. Surely, he could not have lost his innate courtesy in those polished courts.”



(At the conclusion of this speech, which placed a new wreath on the head of the "exile lawyer," Pinkney rose and tendered him a beautiful and generous apology):

"I cannot allow this opportunity to pass without doing justice to my honored and distinguished opponent. The manner in which Mr. Emmet has replied to my too hasty language, reproaches me for its forbearance and urbanity, and could not fail to hasten the repentance which reflection would have produced, and which I am happy, on so public an occasion, of avowing. I offer him a gratuitous and cheerful atonement; cheerful, because it puts me right with myself, and because it is tendered not to ignorance and presumption, but to the highest worth of intellect and morals, enhanced by such eloquence as few may hope to equal; to an interesting stranger, whom adversity has tried and affliction struck severely to the heart; to an exile whom any country might be proud to receive, and every man of generosity would be ashamed to offend."—*L. B. Proctor's, 'Lawyer and Client,' 173-7.*

### TORE FEATHERS FROM HIS PEN

Mr. Emmet always in his exordium would hold a pen in one hand, and slowly tear the feathers from its side till all were torn away; he would then drop the pen and enter ardently into his argument, with an eloquence and a zeal that charmed all hearers.

### JOSEPH STORY'S IMPRESSION, 1807

In 1807, Judge Story, then twenty-eight years of age, visited New York City, and thus speaks of Emmet, in a letter to a friend:

"You have heard much of Emmet, the Irish counsellor. He is near-sighted, and wears a pendant glass, which he occasionally uses. His appearance is not that of an orator, and his voice is rather thick and guttural. I heard him a few moments only on a motion. \* \* \* Emmet has certainly great reputation here as an advocate; and from this opinion being universal, I conclude that he awakens with inspiration of his subject, and rises as he proceeds. As a physiognomist, I should not pronounce him great, yet I think his countenance speaks mind; but it is comprehensiveness rather than vigor. Ogden Hoffman, Radcliffe, and Benson are the next in order; but I can say nothing of them." Judge Story has already said of Harrison, in the same connection: "Harrison is doubtless the first at the bar. His air is modest, his manner easy, and his person rather short. His voice has no force, and I have been told that he is not eloquent as an advocate. The illustrious Hamilton is said to have pronounced him a very learned and able counsellor. I cannot, however, but be impressed that industry more than genius, steadiness of pursuit rather than original quickness, have formed and modeled that character."—*1 Story's Life and Letters, 145.*

### GREATEST FORENSIC ORATOR IN UNION

"Thomas Addis Emmet was not only the greatest forensic orator the United States has known, but he was also a learned, able, and most industrious lawyer."

—*Chas. P. Daly, in 'Article on Chas. O'Connor,' 13 Mag. Am. History (1885), 522.*

### HIS EARLY PRACTICE IN N. Y.

"Business flowed in and not long after his arrival in N. Y. his profession produced him \$10,000 to \$15,000 a year. \* \* \* His remarkable eloquence carried him at once to the very head of the New York Bar.



He had the ready talent of successful and overawing reply. He won his cases by his vehement and impassioned oratory, as well as by his untiring study of the law."—*Warren's History of the American Bar.*

### S. G. GOODRICH'S TRIBUTE

"Thomas Addis Emmet, a native of Cork, in Ireland, was born in 1764. He was one of the committee of the Society of United Irishmen, and was involved in the unfortunate rebellion of 1798. His great learning, his extraordinary talents, his powerful eloquence, soon gave him a place among the first lawyers of the country. He died in 1827."

—*S. G. Goodrich's 'Recollections of a Life-Time.'* 72.

### SKETCH OF EMMET

Thos. Addis Emmet (1764-1827), brother of the famous Irish patriot, Robert Emmet (1778-1805), was the son of a Dublin physician, and studied arts at Trinity College, Dublin, and medicine at the University of Edinburgh. Called to the Dublin bar in 1791, he became a leader of the "United Irishmen," and suffered imprisonment in Scotland for two years. After the treaty of Amiens, he removed to France, and thence to New York, where he rose to be attorney-general of the State (1812). Amongst his publications are "Pieces of Irish History," written during captivity in Scotland.—*See Memoir by Charles G. Haynes, 1829.*

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### GROVER CLEVELAND ON SUCCESS AT THE BAR

"If I were to tender any advice to young men in the legal profession, or contemplating such a career, I think I could not refrain from asking them to dismiss from their minds the idea that the practice of the law is made up in an important degree of oratory and eloquent addresses before courts and juries. No one should enter this profession who is not prepared to do very hard, continuous and often irksome work. I shall follow this advice by saying that there is no mistake about another fact, to wit: In the practice of the law, as in everything else, honesty and frank, fair dealing is not only enjoined by good morals, but is the best policy. It is a delusion to suppose that the noble profession of the law can be faithfully pursued or successfully practiced by trickery and overreaching subterfuges."—*To the N. Y. Herald, March 8, 1891.*



## LORD ELDON, SIR JOHN SCOTT (1751-1838), England

### WANTED TO DO RIGHT

"Party I don't mind *much*; *posterity* not a *great deal*; for of this transaction, in all its particulars, it will be as little informed in matter of fact as it is in most others; but to do the thing that is right, is really matter of most anxious concern with me."

The above was concerning Napoleon's deportation to St. Helena, in 1815. Ackroyd v. Smithson, in 1788, and the Clitheroe Election case were the foundation of his fortunes; member of the House of Commons for 17 years; Solicitor and Attorney General, and Chief Justice of Common Pleas; member of the House of Lords; and finally, in 1801, Lord Chancellor, which position he held for 26 years, and for 20 years, was in everything but name, Prime Minister. He once held a case under advisement for more than 20 years, and even then could be spurred to a decision only by Lord Brougham's bringing the matter to the attention of Parliament.—*Author*.

### HIS REASON FOR DOUBTING

"I know it has been an opinion—a maxim—a principle—aye, an honest principle, on which several of those who have presided in this Court have acted, that a judge is to know nothing more than counsel think proper to communicate to him relative to the case. But, for myself, I have thought and acted otherwise: and I know, yes, I would swear upon my oath, that if I had given judgment on such information and statements only as I have received from counsel on both sides, I should have disposed of numerous estates to persons who had no more title to them, than I have, and, believe me, that I feel comfort in that thought—a comfort of which all the observations on my conduct can never rob me."

—7 *Lives of the Lord Chancellors*, 828.

### "READING COKE — LITTLETON — LIKE CLIMBING A HIGH HILL"

"Whilst you are with Abbot (afterwards Lord Tenterden), find time to read Coke on Littleton again and again. If it be toil and labor to you, and it will be so, think as I do when I am climbing up to Swyer or to Westhill, that the world will be before you when the toil is over; for so the law world will be, if you make yourself complete master of that book."

—*Advice to J. W. Farrar, on the study of law, 1807. 1 Twiss' Life of Eldon*, 301.

Sidney Smith, in York Cathedral, 1824, said in a sermon, "Fifty years ago, the person (Eldon) at the head of his profession, the greatest lawyer in England, perhaps in the world, stood in this church, on such and such an occasion as the present, as obscure, as unknown, and as much doubting of his future prospects as the humblest individual of the profession present."—7 *Lives of the Ld. Chan.*, 52.

### ACKROYD V. SMITHSON

"When about 30 years of age, and after being at the bar 3 or 4 years, then John Scott, was retained and argued Ackroyd v. Smithson, involving the rights of his client to real estate under a will. He won, and as he left



the court, a solicitor touched him on the shoulder, and said, 'Young man, your bread and butter is cut for Life.' But the story does not stop here. In the Chancellor's Court at Lancaster, a brief was given Scott, in a cause in which the interest of his client would oblige him to support, by argument, before Dunning (Lord Ashburton), the reverse of that which had been decided by the decree in *Ackroyd v. Smithson*. When Scott had stated to the Chancellor the point he was going to argue, Dunning said, 'Sit down, young man.' As Scott did not immediately comply, the judge repeated, 'Sit down, sir. I won't hear you.' He then sat down. Dunning said, 'I believe your name is Scott, sir?' The young man, said it is. Upon which Dunning went on: 'Mr. Scott, did not you argue that case of *Ackroyd v. Smithson*?' Scott said that he did argue it. Then said Dunning, 'Mr. Scott, I have read your argument in that case, and I defy you or any man in England to answer it. I won't hear you.' "

—1 *Twiss' Life of Eldon*, 71-2.

ADVICE TO YOUNG LAWYER: "If you wish to live at the bar you must live like a hermit and work like a horse."—*Lord Eldon*.

#### JOHN J. INGALLS' ADVICE TO YOUNG LAWYER

"How to attain eminence and fortune in the practice of the law. So far as I know there is no prescription for fame or fortune. A man may deserve both and obtain neither, or he may deserve neither, and obtain both. The only way to be successful, so far as my observation goes, is to succeed."—*Letter to N. Y. Herald, March 8, 1891*.

#### WILLIAM CALL'S RECEIPT FOR LAWYER'S SUCCESS

"Certainly there is only one thing for a young lawyer to do, and that is to continue his studies and discipline his mind thoroughly by thought and analysis; to be perfectly upright in his business transactions and carefully attentive to every employment he accepts."

—*To N. Y. Herald, March 8, 1891*.

#### HAMILTON'S TRIBUTE TO CHIEF JUSTICE PARSONS

"Mr. Parsons, pray let me ask you one thing. The point I made (describing it), was suggested to me only after much study of the case, and then almost by accident, but I thought it very strange you were fully prepared for it, and I must submit; but I was a good deal surprised at it; and what I want to know is, whether you had anticipated that point?" "Not in the least," was the answer, "but so long ago as when I was studying with Judge Trowbridge, the question was suggested to me, and I made a brief of the authorities, which I happened to have brought with me, and I found the books in Judge Ellsworth's library here in Hartford, Conn."—*Parson's 'Memoirs,' 137-8*.



## ELLENBOROUGH, LORD, EDWARD LAW (1750-1818), Eng.

### LITERARY CRITICISM.—NOT LIBEL

Ellenborough nobly maintained a freedom of literary criticism. Sir John Knight, a silly author, brought an action against respectable book-sellers for a burlesque upon certain foolish Travels, which he had given the world, relying upon a recent decision of Lord Ellenborough, in *Tabbert v. Tipper*. Lord Ellenborough in his holding said:

“In that case, *Tabbert v. Tipper*, the defendant had falsely accused the plaintiff of publishing what he had never published. Here the supposed libel only attacks those of which Sir John Carr is the avowed author; and one writer, in exposing the absurdities and errors of another, may make use of ridicule, however poignant. Ridicule is often the fittest instrument which can be employed for such a purpose. If the reputation or pecuniary interests of the party ridiculed suffer, it is *damnum abseque injuria*. Perhaps the plaintiff’s ‘Tour in Scotland’ is now unsalable; but is he to be indemnified by receiving a compensation in damages from the person who may have opened the eyes of the public to the bad taste and inanity of his composition? Who prized the works of Sir Robert Filmer after he had been refuted by Mr. Locke? But shall it be said that he might have maintained an action for defamation against the great philosopher, who was laboring to enlighten and to ameliorate mankind? We really must not cramp observations upon authors and their works. Every man who publishes a book commits himself to the judgment of the public, and any one may comment upon his performance. He may not only be refuted, but turned into ridicule, if his blunders are ridiculous. Reflection on personal character is another thing. Show me any attack on the plaintiff’s character unconnected with his authorship and I shall be as ready to protect him; but I cannot hear of malice from merely laughing at his works. The works may be very valuable, for anything I know to the contrary, but others have a right to pass judgment upon them. The critic does a great service to society who exposes yapid as well as mischievous publications. He checks the dissemination of bad taste and saves his fellow-subjects from wasting their time and money upon trash. If a loss arises to the author, it is a loss without injury; it is a loss which the party must sustain; it is a loss of fame and profit to which he never was entitled. Nothing can be conceived more threatening to the liberty of the press than the species of action before the court. We ought to resist an attempt against fair and free criticism at the threshold.”—*Verdict was given for defendants, Carr v. Hood, et al., 1 Camp, 355.*

### EPIGRAM ON EDMOND BURKE

Law had the credit of making the celebrated epigram upon the leader of the Warren Hastings impeachment, in which Law was leading counsel for the defendant:

“Oft have we wonder’d that on Irish ground,  
No poisonous reptile has e’er yet been found;  
Revealed the secret stands of Nature’s work—  
She saved her venom to produce her Burke.”

—*Campbell’s Lives, p. 141.* (But it is said to have been composed by Dallas, another counsel for the defense.)



## A PRAYER—COMPOSED BY LORD ELLENBOROUGH

"O God, heavenly Father by whose providence and goodness all things were made and have their being, and from Whom all the blessings and comforts of this life, and all the hopes and expectations of happiness hereafter, are, through the merits of our beloved Savior, derived to us, Thy sinful creatures, I humbly offer up my most grateful acknowledgments for Thy divine goodness and protection, constantly vouchsafed to me through the whole course of my life, particularly indulging to me such faculties of mind and body, and such means of health and strength, as have hitherto enabled me to obtain many great worldly comforts and advantages. Grant me, O Lord, I humbly beseech Thee, of these Thy manifold blessings, together with a steadfast disposition and purpose to use them for the benefit of my fellow-creatures, and Thy honor and glory. And grant, O Lord, that no decay or diminution of these faculties and means of happiness may excite in my mind any dissatisfied or desponding thoughts or feelings, but that I may always place my firm trust and confidence in Thy divine goodness; and whether the blessings heretofore indulged to me shall be continued or cease, and whether Thou shalt give them or take them away, I may still, in humble obedience to Thy will, submit myself in all things with patience and resignation to the dispensations of Thy divine providence, humbly and gratefully blessing, praising and magnifying Thy holy name forever and ever. Amen."—*Composed while at Paris, in 1817.*

## EMPLOYED AS A SURGEON

To the surgeon in the witness box who said, "I employ myself as a surgeon," Ellenborough retorted: "But does anybody else employ you as a surgeon?"

## THE BOOK OF NATURE

Said Randall Jackson, in a flowery harrangue: "My Lords, in the book of nature it is written—"

"Be kind enough, Mr. Jackson," interposed Ellenborough, "to mention the page from which you are about to quote."

## A PLEASURE TO HEAR ARGUMENT

Preston, the great conveyancer, who had tired out the court with a dreary speech, toward the close of the day asked their lordships when it would meet their pleasure to hear the remainder of his argument. Ellenborough replied, with a sigh: "We are bound to hear you, and we will endeavor to give you our individual time on Friday next; but as for pleasure, that, sir, has been long out of the question."

## "THE COURT IS WITH YOU"

"The unfortunate client for whom it is my privilege to appear," said a young barrister, making his first attempt in Westminster Hall, "the unfortunate client for whom I appear, hem, hem—I say my lord, my unfortunate client—" Leaning forward and speaking in a soft voice, the Judge said: "You may go on sir, so far the court is with you."

## LORD KENYON'S PARSIMONY

Having jested about Kenyon's parsimony as the old man was at the point of death, Ellenborough hearing that through the blunder of an illiterate undertaker the motto on Kenyon's hatchment in Lincoln's Inn Fields



had been painted, "*Mors janua vita*," instead of "*Mors janua vitae*," exclaimed. "Bless you, there's no mistake; Kenyon's will directed that it should be '*vita*,' so that his estate might be saved the extra expense of a diphthong."

Ellenborough was the lawyer who vanquished such champions as Burke, Fox, Sheridan, Windham and Grey, in the Hastings Impeachment, succeeding in 20 out of 23 important contests on the admission of evidence, and after 145 days of trial, cleared his client by a large majority vote of the Peers.

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### SCHOULER'S CHARACTERIZATION OF TOOMBS AND BENJAMIN

"Notwithstanding great brain power and ability, Toombs was a difficult man to get along with; his tongue was sharp and his disappointed ambition to be first made him sharply sensorious of the man who preceded him. Whatever Davis chose to do he himself would have done differently. Foreign relations gave him but little employment, for he used to say that as Secretary of State he carried the archives of the Confederacy under his hat. He criticised his chief as one too partial to regulars and West Point; and Davis, to humor him, after R. M. T. Hunter of Virginia had taken his place in the cabinet, made him a brigadier-general of volunteers. Toombs was one of a type of southern statesmen, now extinct with slavery, possessing much political ability, but combative, intractable and self-asserting. His military success was not great. Too late for prowess at Bull Run, he idled his time during the inaction of a Virginia camp, indulgent to the boys, exasperating to superiors, incapable of military discipline, fault finding and not in expression alone intemperate. Before the war was half over, this man, who so nearly led the southern cause in early 1861, retired to his home, vexed and soured against the whole concern. Contemporaries had said at the outset that Toombs was the brain of the Confederacy; but that title, as events developed, belongs rather to Attorney-General Judah P. Benjamin, the ablest, most versatile and most constant of all Davis' civil counselors, who acted as Secretary of War after Walker's retirement in September and was then installed Secretary of State by the following March, to remain premier until the bitter end, sanguine and serene in bearing, through all mutations of fortune and misfortune."—*Schouler's U. S. Hist.*, 88-9.

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### THE CYCLE OF MORAL REVOLUTIONS

"Tacitus is irresistible. 'The more I meditate,' he writes, 'on the events of ancient and modern times, the more I am struck with the capricious uncertainty which mocks the calculations of men in all their transactions.' Again: 'Possibly there is in all things a kind of cycle and there may be moral revolutions just as there are changes of seasons.' "

—*James Ford Rhodes.*



## THOMAS ERSKINE, LORD ERSKINE (1750-1823), England

### EVIDENCE

"The principles of evidence in law are founded in the charities of religion, in the philosophy of nature, in the truths of history, and in the experience of human life."

### THE JEWS

"Is there a person of the least knowledge who suffers himself to doubt that in the most comprehensive meaning of Scripture, the prophecy of the Christian religion's universal reception is fast fulfilling, and certainly must be fulfilled? For my own part, gentlemen, of the jury, I have no difficulty in saying to you, not as counsel in this cause, but speaking upon my honor, for myself (and I claim to be considered as an equal authority, at least, to Mr. Paine, on the evidence which ought to establish any truth), that the universal dispersion of the Jews throughout the world, their unexampled sufferings, and their invariable distinguished characteristics, when compared with the histories of all other nations, and with the most ancient predictions of their own lawgivers and prophets concerning them, would be amply sufficient to support the truths of the Christian religion, if every other record and testimony on which they stand had irrecoverably perished."

—*From Erskine's speech in defense of Thos. Paine, for publishing the Age of Reason, 1794.*

### KING—DONKEY

"That which is called firmness in a king, is called obstinacy in a donkey."

### TEMPER JUSTICE WITH MERCY

"Every human tribunal ought to take care to administer, as we look hereafter to have justice administered to ourselves; upon the principle on which the attorney-general prays sentence upon my client—God have mercy upon us!—instead of standing before him in judgment with the hopes and consolations of Christians, we must call upon the mountains to cover us; for which of us can present for Omniscient examination a pure, unspotted, and faultless course? But I humbly expect that the benevolent Author of our being will judge us, as I have been pointing out for your example. Holding up the great volume of our lives in His hand, and regarding the general scope of them, if He discovers benevolence, charity, and good will to man, beating in the heart, where He alone can look; if He finds that our conduct, though often forced out of the path by our infirmities, has been in general well directed, His searching eye will assuredly never pursue us into those little corners of our lives, much less will His justice select them for punishment, without the general context of our existence, by which faults may be sometimes found to have grown out of virtues, and very many of our heaviest offenses to have been gratified, by human imperfection, upon the best and kindest of our affections. No, gentlemen, believe me this is not the course of divine justice, or there is no truth in the Gospels of Heaven. If the general tenor of man's conduct be such as I have represented, he may walk through the shadow of death, with all his faults about him, with as much cheerfulness as in the common paths of life, because he knows that, instead of a stern accuser, to expose before the Author of



his nature those frail passages which, like the scored matter in the book before you, checkers the volume of the brightest and best spent life, His mercy will obscure them from the eyes of His purity, and our repentance blot them out forever."

—*From argument to the jury, in the Stockdale case.*

### THE FEELINGS OF SUBJUGATED MAN

"Gentlemen, I have not been considering this subject through the cold medium of books, but have been speaking of man and his nature, and of human dominion, from what I have seen of them myself among reluctant nations submitting to our authority. I know what they feel, and how such feelings can alone be repressed. I have heard them in my youth from a naked savage, in the indignant character of a prince surrounded by his subjects, addressing the governor of a British colony, holding a bundle of sticks in his hand, as the notes of his unlettered eloquence. 'Who is it,' said the jealous ruler over the desert, encroached upon by the restless foot of English adventure—'who is it that causes this river to rise in the high mountains and to empty itself into the ocean? Who is it that causes to blow the loud winds of winter, that calms them again in summer? Who is it that rears up the shade of these lofty forests, and blasts them with the quick lightning at his pleasure? The same Being who gave to you a country on the other side of the waters, and gave ours to us; and by this title we will defend it,' said the warrior, throwing down his tomakawk upon the ground and raising the war sound of his nation. These are the feelings of subjugated man all round the globe; and depend upon it, nothing but fear will control where it is vain to look for affection."—*From speech in defense of Stockdale.*

A London publisher issued a pamphlet regarding the trial of Warren Hastings, in which the author, a Scottish clergyman, reflects severely on the House of Commons. It was moved by a member of Commons that the attorney-general be directed to prosecute Stockdale the printer of the pamphlet, for libel on the Commons. Says Jas. L. High of Erskine—"There have been abler judges, there have been wiser statesmen, but as a forensic orator, he stands without a rival and without a peer."

### AN APOLOGY FOR EXCESS

"From minds thus subdued by the terms of punishment there could issue no words of genius to expand the empire of human reason, nor any masterly compositions on the general nature of government, by the help of which the great commonwealths of mankind have founded their establishments; much less any of those useful applications of them to critical conjunctures, by which from time to time, our own constitution, by the exertions of patriot citizens, has been brought back to its standard. Under such terrors all the great lights of science and civilization must be extinguished: for men can not communicate their free thoughts to one another with a lash held over their heads. It is the nature of everything that is great and useful, both in the animate and inanimate world, to be wild and irregular; and we must be contented to take them with the alloys which belong to them, or live without them. Genius breaks from the fetters of criticism; but its wanderings are sanctioned by its majesty and wisdom when it advances in its path: subject to the critic, and you tame it into dullness. Mighty rivers break down their banks in the winter, sweeping to death the flocks which are fattened on the soil that they fertilize in the summer: the few may be saved by embankments from drowning, but the flock must perish for hunger. Tempests occasionally shake our dwellings and dissipate our commerce; but they scourge before them the lazy elements which without them would stagnate into pestilence. In like manner, Liberty herself—the last and best



gift of God to his creatures, must be taken just as she is. You might pare her down into law; but she would then be Liberty no longer: and you must be content to die under the lash of this inexorable justice, which you had exchanged for the banners of freedom."

—*Passage from defense of John Stockdale.*

#### DESCRIPTION OF OLD MAN IN BREACH OF PROMISE CASE

"It is probable that her (the plaintiff's) circumstances were very low, from the character in which she was introduced to the defendant, who being an old and infirm man, was desirous of some elderly person as a house-keeper; and no imputation can be justly cast upon the plaintiff for consenting to such an introduction; for, by Mr. Wallace's favor, the jury had a view of this defendant, and the very sight of him rebutted every suspicion that could possibly fall upon a woman of any age, constitution, or complexion. I am sure everybody who was in court must agree with me, that all the diseases catalogued in the dispensatory seemed to be running a race for his life, though the asthma appeared to have competely distanced his competitors, as the fellow was blowing like a smith's bellows the whole time of the trial. His teeth being all gone, I shall say nothing of his gums; and as to his shape, to be sure, a base-fiddle is perfect gentility compared to it."

He concluded with expressing the wish that the young woman whom the defendant had married:

"Would manifest her affection by furnishing him with a pair of horns, sufficient to defend himself against the sheriff, when he came to levy the money under the verdict!"—*Howard v. Bingham.*

#### EXTRACT IN CRIMINAL CONVERSATION

"Yet, dreadful to relate, and it is the bitterest evil of which the plaintiff has to complain, a criminal intercourse, for nearly five years before the discovery of the connection, had most probably taken place. I will leave you to consider what must have been the feelings of such a husband, upon the fatal discovery that his wife—and such a wife—had conducted herself in a manner that not merely deprived him of her comfort and society, but placed him in a situation too horrible to be described. \* \* \* He does not know at what time this heavy calamity fell upon him. He is tortured by the most conflicting of all human sensations. When he looks at the children whom he is by law bound to protect and to provide for, and from whose existence he ought to receive the delightful return which the union of instinct and reason has provided for the continuation of the world, he knows not whether he is lavishing his fondness and affection upon his own children, or upon the seed of a villain, sown in the bed of his honor and delight. He starts back with horror, when instead of his own image reflected from their infant features, he thinks he sees the destroyer of his happiness—a midnight robber introduced into his house, under professions of friendship and brotherhood—a plunderer, not in the repositories of his treasure, which may be supplied, or lived without—*'but there where he had garnered up his hopes,'*—where either he must live, or bear no life."

This action was brought by a clergyman, the Archbishop of York, against a country gentleman, who lived in his parish and with whom he had been on terms of great intimacy—*Markham v. Faucet.* The verdict was for \$35,000, obtained by Erskine who was for plaintiff; tried in 1802.

#### THE SOURCE OF ALL OUR AFFECTIONS

"Nothing, certainly is more delightful to the human fancy than the possession of a beautiful woman, in the prime of health and youthful



passion; it is, beyond all doubt, the highest enjoyment which God in his benevolence, and for the wisest purposes, has bestowed upon His own image. I reverence as I ought that mysterious union of mind and body, which, while it continues our species, is the source of all our affections—which builds up and dignifies the condition of human life—which binds the husband to the wife by ties more indissoluble than laws can possibly create—and which, by the reciprocal endearments arising from a mutual passion, a mutual interest, and a mutual honor, lays the foundation of that parental affection which dies in the brutes, with the necessities of nature, but which reflects back again upon the human parents the unspeakable sympathies of their offspring, and all the sweet, delightful relations of social existence.”

The above passage was given by Erskine in his argument to the jury, in *Howard v. Bingham for Criminal Conversation*, as a contrast between true lovers, and the relation that existed between Howard and his wife, as Lady Elizabeth was compelled to marry him, after breaking off an engagement with Bingham, whom she dearly loved. The seduction did not take place between her and Bingham, until plaintiff (Howard) had really cast her off, because of their cordial hatred for each other, leading Erskine to say, in the same address: “I would have brought before you a noble youth (Bingham), who had fixed his affections upon one of the most beautiful of her sex (Mrs. Howard), and who enjoyed his in return. I would have shown you their suitable condition; I would have concluded by showing her to you in the arms of another, by the legal prostitution of parental choice, in the teeth of affection, with child by a rival, and only reclaimed at last, after so cruel and so afflicting a divorce, and her very morals in a manner impeached, by asserting the purity and virtue of original and spotless choice. Good God! imagine my client to be plaintiff, and what damages are you not prepared to give him? And yet, he is here as defendant, and damages are demanded against him. Oh, monstrous conclusion!” Erskine represented the defendant, in the Court of King’s Bench, 1794. Verdict was for the plaintiff but Erskine succeeded in reducing it to \$2,500. This is one of the few cases in which Erskine appeared for defendant.

### ORATORY

“Intellect alone, however exalted, without strong feelings, without even irritable sensibility, would be only like an immense magazine of powder, if there were no such element as fire in the natural world. It is the *heart* which is the spring and fountain of all eloquence.”—*From a letter by Erskine, introducing the Speeches of Charles James Fox.*

### DIGNITY OF THE LAW

“If the dignity of the law is not sustained, its sun is set, never to be lighted up again.”—*In Burdett v. Abbott, 5 Dow., 202.*

### TILT WITH JUDGE BULLER

Mr. Erskine, at the age of 34, was engaged in the defense of Dr. Shipley, Dean of St. Asaph, indicted, most absurdly, as it appeared, for a seditious libel; he having caused to be published a pamphlet, entitled ‘A Dialogue between a Gentleman and a Farmer,’ written by his brother-in-law, the celebrated Sir William Jones. The cause came before Mr. Justice Buller; the jury returned as their verdict, ‘guilty of publication only.’ A singular conversation ensued:

Q. Buller, J.: “Gentlemen, if you add the word, *only*, it will be negating the innuendoes.”

A. Erskine: “I desire your Lordship, sitting here as judge, to record the verdict, as given by the jury.”



Q. Buller, J.: "You say he is guilty of publishing the pamphlet, and that the meaning of the innuendos is, as stated in the indictment."

A. Juror: "Certainly."

Q. Erskine: "Is the word, *only*, to stand as part of the verdict?"

A. Juror: "Certainly."

A. Erskine: "Then I insist it shall be recorded."

Q. Buller, J.: "Then the verdict must be understood; let me understand the jury."

A. Erskine: "The jury do understand their verdict."

Q. Buller, J.: "Sir, I will not be interrupted."

A. Erskine: "I stand here as an advocate for a brother citizen; and I desire that the word *only*, may be recorded."

Q. Buller, J.: "Sit down, Sir; remember your duty, or I shall be obliged to proceed in another manner."

A. Erskine: "Your Lordship may proceed in what manner you think fit. I know my duty, as well as your Lordship knows yours, I shall not alter my conduct."

Upon this, Lord Campbell, afterwards Chief Justice of England, has this to say:

"The learned judge took no notice of his reply; and quailing, under the rebuke of his pupil (Erskine had read law with Buller), did not repeat the menace of commitment. This noble stand for the independence of the Bar, would, of itself, have entitled Erskine to the statue, which the profession affectionately erected to his memory, in Lincoln's Inn Hall. We are to admire the decency and propriety of the demeanor, during the struggle, no less than its spirited and the felicitous precision, with which he meted out the requisite and justifiable portions of defiance. The example has had a salutary effect, in illustrating and establishing the duties of judge and advocate in England."

—*Sigma's 'Reminiscences of Sam'l Dexter,'* 62-4; 6 *Campbell's Lives of the Lord Chancellors*, 415.

#### DUTY OF A LAWYER—DEFENSE OF THOS. PAINE

"I will forever, at all hazards, assert the dignity, independence, and integrity of the English bar, without which impartial justice, the most valuable part of the English Constitution, can have no existence. From the moment that any advocate can be permitted to say that he *will*, or will *not*, stand between the Crown and the subject arraigned in the court where he daily sits to practice, from that moment the liberties of England are at an end. If the advocate refuses to defend from what *he may think* of the charge or of the defense, he assumes the character of the judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of, perhaps, a mistaken opinion into the scale against the accused, in whose favor the benevolent principle of English law makes all presumptions, and which commands the very judge himself to be his counsel."

Before defending Thomas Paine for Publishing his 'Rights of Man.' Paine was pronounced guilty by the jury. The case was tried before Lord Kenyon, 1792.—*Author.*

#### ARGUMENT TO THE JURY IN DEFENSE OF PAINE

"The proposition which I mean to maintain, as the basis of the Liberty of the press, and without which it is an empty sound, is this: that every man, not intending to mislead, but seeking to enlighten others with what his reason and conscience, however erroneously, have dictated to him as truth, may address himself to the universal reason of a whole nation, either upon the subject of governments in general, or upon that of our own particular country; that he may analyze the principles of the con-



stitution, point out its errors and defects, examine and publish its corruptions, warn his fellow-citizens against their ruinous consequences, and exert his whole faculties in pointing out the most advantageous changes in establishments which he considers to be radically defective, or sliding from their object by abuse. All this every subject of this country has a right to do, if he contemplates only what he thinks would be for its advantage, and but seeks to change the public mind by the conviction which flows from reasoning dictated by conscience.

"If, indeed, he writes what he does not think; if, contemplating the misery of others, he wickedly condemns what his own understanding approves; or, even admitting his real disgust against the government or its corruptions, if he calumniates living magistrates, or holds out to individuals, that they have a right to run before the public mind in their conduct; that they may oppose by contumacy or force what private reason only disapproves; that they may disobey the law, because their judgment condemns it; or resist the public will, because they honestly wish to change it, he is then a criminal upon every principle of rational policy, as well as upon the immemorial precedents of English justice; because such a person seeks to disunite individuals from their duty to the whole, and excites to overt acts of misconduct in a part of the community, instead of endeavoring to change, by the impulse of reason, that universal assent, which, in this and in every country, constitutes the law for all.

"I have, therefore, no difficulty in admitting, that, if upon an attentive persual of this work, it shall be found that the defendant has promulgated any doctrines which excite individuals to withdraw from their subjection to the law by which the whole nation consents to be governed; if his book shall be found to have warranted or excited that unfortunate criminal who appeared here yesterday to endeavor to relieve himself from imprisonment, by the destruction of a prison, or dictated to him the language of defiance which ran through the whole of the defense; if throughout the work there shall be found any syllable or letter, which strikes at the security of property, or which hints that anything less than the whole nation can constitute the law, or that the law, be it what it may, is not the inexorable rule of action for every individual, I willingly yield him up to the justice of the court."

### SPEECH IN PROSECUTION OF WILLIAMS

In 1897, he prosecuted Williams, the publisher of Paine's "Age of Reason," who was convicted, and sentenced to a year's imprisonment, which seems inconsistent, as he had defended Thos. Paine, the writer of the same.

### THE TRUTHS OF CHRISTIANITY

"I have been ever deeply devoted to the truths of Christianity; and my belief in the holy gospel is by no means owing to the principles of education, though I was religiously educated by the best of parents, but has arisen from one of the most continued reflections of my riper years and understanding. It forms at this moment the great consolation of a life, which, like a shadow, passeth away; and without it, I should consider my long course of health and prosperity, too long perhaps, and too uninterrupted to be good for any man, only as the dust which the wind scatters, and rather as a snare than a blessing. \* \* \* Is not this freedom of controversy, and freedom of worship, sufficient for all the purposes of human happiness and improvement? Can it be necessary for either, that the law should hold out, revile the government of their country, or the religion on which it rests for its foundation? I expect to hear in answer to what I am now saying, much that will offend



me. \* \* \* Every man has a right to investigate, with decency, controversial points of the Christian religion; but no man, consistently with a law which only exists under its sanctions, has a right to deny its very existence, and to pour forth such shocking and insulting invectives, as the lowest establishments in the graduation of civil authority ought not to be subjected to, and which soon would be borne down by insolence and disobedience, if they were.

"The principle pervades the whole system of the law, not merely in its abstract theory, but in its daily, in its most applauded practice. The intercourse between the sexes, which, properly regulated, not only continues, but humanizes and adorns our natures, plays, and novels, which are in the hands of everybody. Some of them lead to the confirmation of every virtuous principle; others, though with the same profession, address the imagination in a manner to lead the passions into dangerous excesses; but though the law does not nicely discriminate the various shades which distinguish such works from one another, so as to suffer many to pass, through its liberal spirit, that upon principle ought to be suppressed, would it, or does it tolerate, or does any decent man contend that it ought to pass by unpunished, libels of the most shameless obscenity, manifestly pointed to debauch innocence, and to blast and poison the morals of the rising generation? \* \* \*

"Gentlemen, the author of this book has written largely on public liberty and government; and this last performance, which I am now prosecuting, has, on that account, been more widely circulated, and principally among those who attached themselves from principle to his former works. This circumstance renders a public attack upon all revealed religion from such a writer infinitely more dangerous. The religious and moral sense of the people of Great Britain is the great anchor, which alone can hold the vessel of the state amidst the storms which agitate the world; and if the mass of the people were debauched from the principles of religion, the true basis of that humanity, charity, and benevolence, which have been so long the national characteristic, instead of mixing myself, as I sometimes have done, in political reformatations, I would retire to the uttermost corners of the earth, to avoid their agitation; and would bear, not only the imperfections and abuses complained of in our own wise establishment, but even the worst government that ever existed in the world, rather than go to the work of reformation with a multitude set free from all the charities of Christianity, who had no other sense of God's existence than was to be collected from Mr. Paine's observations of nature, which the mass of mankind have no leisure to contemplate, which promises no future rewards, to animate the good of the glorious pursuit of human happiness nor punishments to deter the wicked from destroying it even in its birth. The people of England are a religious people, and, with the blessing of God, so far as it is in my power, I will lend my aid to keep them so."

—*The above is from Erskine's speech to the jury, in the prosecution of Williams, on behalf of 'The Society for the Suppression of Vice and Immorality,' 1797. Williams was found guilty, and sentenced to one year in prison.*

#### TILT WITH LORD MANSFIELD—BAILLIE CASE

After stating that the seamen of the hospital, grateful for the exertions of Captain Baillie in their favor, had surrounded his apartments, and testified their feelings by acclamations, "which sailors never bestow but on men who deserve them," Mr. Erskine proceeded in that strain of excited language and sentiment, which when skilfully applied seldom fails to carry with it the passions of the hearers:—

"This simple and honest tribute was the signal for all that has followed. The leader of these unfortunate people was turned out of office; and the



affidavit of Charles Smith is filed in court, which I thank God, I have not been able to read without tears; how, indeed, could any man, when he swears that for this cause alone his place was taken from him: that he received his dismissal when languishing with sickness in the infirmary, the consequence of which was that his unfortunate wife and several of his helpless, innocent children died in want and misery, *the woman actually expiring at the gates of the hospital!* That such a wreath should escape chains and a dungeon is a reproach to humanity, and to all order and government; but that they should become *prosecutors* is a degree of effrontery that would not be believed by any man who did not accustom himself to observe the shameless scenes which the monstrous age we live in is every day producing."

(But the man, Erskine considered the chief offender still remained untouched. At length, towards the end of the speech, although that person did not stand forward as a party to the proceeding, Erskine ventured to name him):—

"Indeed, Lord Sandwich has, in my mind, acted such a part——" (Here Lord Mansfield interrupted him, reminding him that Lord Sandwich was not in court. Mr. Erskine burst forth impetuously):—

"I know that he is not before the court; but for that very reason *I will bring him before the court.* He has placed these men in the front of the battle, in hopes to escape under shelter; but I will not join battle with them: their vices though screwed up to the highest pitch of human depravity, are not of dignity enough to vindicate the combat with *me.* I assert that the Earl of Sandwich has but one road to escape out of this business without pollution and disgrace; and that is, by publicly disowning the acts of the prosecutors, and restoring Captain Baillie to his command. If he does this, then his offense will be no more than the too common one of having suffered his own personal interests to prevail over his public duty, in placing his voters in the hospital. But, if on the contrary, he continues to protect the prosecutors, in spite of the evidence of their guilt—which has excited the abhorrence of the numerous audience that crowd this court; if he keeps this injured man suspended, or dares to turn that suspension into a removal, I shall then not scruple to declare him *an accomplice in their guilt and a traitor to his trust.* *Fine and imprisonment!* The man deserves a palace instead of a prison, who prevents the palace built by the bounty of his country from being converted into a dungeon, and who sacrifices his own security to the interests of humanity and virtue."—*Crown v. Baillie.*

When Erskine began his career, his prospects were far from encouraging. Without means and without professional or social connections, he looked forward probably to a weary probation upon the back benches of the court, among the horde of nameless and briefless juniors, lingering like the ghosts upon the banks of the river Styx, wearily waiting for a passage over. He had scarcely a shilling in his pocket when he got his first retainer; and that he would not have received, and consequently might not have risen to be Lord Chancellor, but for the fortunate sprain which caused him hastily to relinquish an intended visit, and return home, where he was waited on by a maritime gentleman, Captain Baillie, whose case he took up, mastered, and triumphantly conducted before Lord Mansfield. When the case came on, he found in the list of barristers retained, the names of four senior counsel, and, despairing of being heard after so many predecessors, he gave himself no more trouble about the matter. But, the testimony was so long, and some of the counsel so tedious—tediousness aggravated by the circumstance that one of them was afflicted with strangury, and had to retire once or twice in the course of his argument—that Lord Mansfield adjourned the cause till next morning, thus giving the young advocate a whole night to arrange his thoughts, and enabling him to address the court when his faculties were awake and refreshed. In alluding to this lucky incident, by which he was enabled



to make what Lord Campbell calls "the most wonderful forensic effort of which we have any account in British annals," Erskine says,—“I have since flourished, but I have always blessed God for the providential strangury of poor Hargrave.” Rarely has a brilliant start in life,—perhaps, the entire success of a life,—been owing to so many lucky accidents; but who does not see that all these would have been of no advantage to the young barrister, had he been unequal to the occasion; had he not, by previous study, self-training, and self-sacrifice, prepared himself to take advantage of the accidents which brought him into notice.—*Matthews' 'Getting On in The World,' 29-30.*

### ARMOR OF THE LAW

“A prisoner is covered all over with the armor of the law.”

“Erskine died poor.—But at one time was worth a million dollars.”

—*Said Walter Scott*

### PLEASURE AND PAYNE

Visiting Sir Ralph Payne, Erskine, being tired, reclined on a sofa; in the course of the evening returned to the festive circle; and Lady Payne, inquiring how he found himself, he presented her the following couplet:—

“’Tis true I am ill, but I need not complain,  
For he never knew *pleasure*, who never knew *Payne*.”

### THE AGES OF IRON AND BRASS

On the removal of a distinguished counsel from a house in Red Lion Square, an ironmonger became its occupant; and Erskine wrote the following epigram on the change:—

“This house, where once a lawyer dwelt,  
Is now a smith’s—Alas!  
How rapidly the iron age  
Succeeds the age of brass!”

### RUFUS CHOATE ON ERSKINE

“Erskine was a very vehement speaker. A gentleman told me that he had frequently seen him, in addressing a jury, jump up and knock his feet together before he touched the floor again; and, indeed, how could he have carried off many things which occur in his speeches, except by great vehemence, such as ‘I tremble at the thought!’ The Indian in Stockdale’s case! and ‘I will bring him before the court!’ and again, ‘By God, the man who says this is a ruffian.’ He was, however, very judicious in his forensic flights; never made a blunder. The management of his case, too, was admirable. Master of every art, and trick, and subtlety and contrivance. But, after all, he was a very singular, and, in some degree, an inexplicable fellow. He knew men very thoroughly from his service on deck and field. Then he had thrown himself upon the best English literature, with a hungry and even voracious appetite; and from it, especially from his carfeul and continual study of Milton and Shakespeare, he gained his chaste, rich and admirable diction. This diction is his chief acquisition. And he thus grasped the flower of literature, without becoming imbued with the faults and foibles of the literary man; which are a dreamy, sentimental, brooding, imagining tendency. These words he divided, and delivered in sentences fashioned by a very musical and rhythmic ear. He had, too, a natural knack for catching at elegant and felicitous modes of expression. As he learned



not much besides words, and how to answer the more pressing necessities of his profession, and as he came early into active business, he spent his life in thus meeting the demands of the day; and when his energies for that somewhat abated, he had *no thought* and knowledge to fall back upon. He was sometimes said to have been put down, by his adversary procuring some one to yawn in his face. His career of twenty years came to a dead stop in the woolsack of the Chancellor of England."

### NOT A PROFOUND JURIST

"Erskine never did become a profound jurist, but along with his lively imagination he had a logical understanding, and by severe application at this period (1778, when 28 years old) he made the considerable progress, which several who have been pushed high in our profession have never reached, of being able thoroughly to comprehend any question of law which he had occasion to consider,—to collect and arrange the authorities upon it, and to argue it lucidly and scientifically."

—6 *Campbell's Lord Chan.*, 387.

### COMPARED WITH CONTEMPORARIES

"Erskine could not display the peculiar energy of Edward Law (Lord Ellenborough), invigorated as it was by Latinized phraseology, and a pronunciation slightly tinged with a northern burr. He had not the coarse humor of Mingay, the tormenting pertinacity of Gibbs, or the interrogative astuteness of Garrow, but he possessed an opulence of imagination, a fertility of fancy, a power of commanding at an instant all the resources of his mind, and a dexterity in applying them, which the whole united Bar of England could not equal."

—*Campbell's 6 Ld. Chan.*, 679, note.

### CHARACTERISTICS

"His first great excellence was his devotion to his client and in the whole compass of his orations, there is not a single instance of the business in hand—the great work of persuading—being sacrificed to raise a laugh or to excite admiration of his own powers. He utterly forgot himself in the character he represented. Through life he was often ridiculed for vanity and egotism—but not from anything he ever said or did in conducting a cause in a court of justice. There from the moment the jury was sworn he thought of nothing but the verdict, till it was recorded in his favor. Earnestness and energy were ever present throughout his speeches—impressing his argument on the mind of his hearer with a force which seemed to compel conviction. He never spoke at a tiresome length; and throughout all his speeches no weakness, no dullness, no flagging is discoverable; and we have ever a lively statement of facts—or reasoning pointed, logical, and triumphant. \* \* \* His diction was pure, simple, and mellifluous—the cadences not being borrowed from any model, nor following any rule, but marked by constant harmony and variety. \* \* \* He used all manner of innocent little artifices of dress, examined the court the night before the trial, in order to select the most advantageous place for addressing the jury. On the cause being called, the crowded audiences were, perhaps, kept waiting a few minutes before the celebrated stranger made his appearance; and when, at length, he gratified their impatient curiosity, a particularly nice wig and a pair of new yellow gloves distinguished and embellished his person, beyond the ordinary costume of the barristers of the circuit."

—*Campbell's 6 Lord Chancellors*, 680-2.



## WM. M. EVARTS (1818-1901) New York

### MEN—CHARACTER

“As there is nothing in the world great but men, there is nothing truly great in men but character.”

### THE CONVICT THANKED CLERGYMAN

Evarts used to tell a story of a convict, who thanked the clergyman who obtained his pardon, and returning with gratitude the Bible lent him, said he hoped he should never have occasion to use it again.

### DOLLAR WOULD GO FURTHER IN WASHINGTON'S DAY THAN OURS

When Lord Coleridge visited this country, he remarked to Evarts, who was showing him the sights, Coleridge remarked upon looking at the width of the Potomac, that he did not believe Washington could throw a dollar across the river, as he was reputed to have done. “You know,” said Evarts, “that a dollar went much farther in those days than it does in ours.”

### TAKEN UP FOR FOREIGN MISSIONS

While Evarts was Secretary of State in Hayes' Cabinet, he saw an elevator ascending, filled to overflowing with missionaries, and observed that “he had never before seen so large a collection taken up for foreign missions.”

### HANDS IN POCKET

Evarts and Mark Twain, were the speakers at a banquet, and Evarts was disparaging his ability to cope with a man noted as a humorist, and finally said, “Does it not strike you as very humorous that a lawyer should be here to entertain you with his wit, when we have with us a professional wit?” (while he said this, he had his hands in his pantaloon pockets, as was his custom). Mark Twain, replied: “Does it not strike you as peculiar, that a lawyer appears here with his hands in his own pockets, instead of his client's?”

### TEACHER ANSWERED ALL THE QUESTIONS, CORRECTLY— AND YET DID NOT PASS

Said Wm. Evarts, at Brooklyn, N. Y., in the campaign of 1880: “The Democratic party having been up for examination several times, during the last 20 years, has now presented itself once more. It is like the teacher who could not pass examination down in Texas and after his entreaties, was allowed to try it over again, and failed a second time. He was asked why he didn't pass that time and replied, ‘How could I? They asked me the same questions.’ He had better answer like the college student, who in examination had been badly plucked, and was asked how he fared. ‘Fared?’ said he, ‘I didn't pass at all, and yet I answered every question correctly; and they asked me a great many questions.’ ”

“‘Why,’ said his friends, ‘how could that be, if you answered every question correctly?’ ‘Why,’ replied, he, ‘to every question, I replied that I didn't know.’ ”



### "SOMETHING CHOICE FROM EVART'S PEN"

Elihu Root visited Evarts, at his country home, in Vermont, and during the conversation, asked his host if he ever contributed anything to a certain Magazine.

"Yes," said Evarts, "the editor has written me for something choice from my pen. I think I'll send him a slice of this ham," which, by the way, he was carving for his guests at his dinner.

### DONKEY LONELY WITHOUT HIM

Said Evarts: "For the amusement of my little daughter I sent a donkey to my country home in Vermont. It was not much larger than a sheep. The child had never heard, until a day or two after its arrival, the lamentable voice of the creature. Struck by the sadness of its tone, she wrote in great haste for me to return immediately, stating as a reason, that the donkey was so lonely without me."

### AFFIDAVITS NOT FACTS

"Letters of acceptance of a candidate for the Presidency, are not exactly transactions or acts of Congress. When Admiral Coffin, who lived at Cape Cod as a child, by his adherence to the British crown had risen to the rank of Admiral in the Navy, he came over to visit this country. He came over in about 1830 to see his native land. On the way over, he told his officers that at Cape Cod they would see lobsters that would weigh 25 pounds. The rules would not permit the officers to contradict the Admiral, but they distrusted the statement. He said, 'If you doubt it, I will make you a bet.' It was made. On arriving and making a thorough search, no such lobsters were found, of course. 'Well,' said he, 'they don't happen to be here just now, but I will get the affidavits of the fishermen to show there are such lobsters.' A pile of affidavits was brought in, and it was left to an umpire to decide the bet, and he decided that 'affidavits were not lobsters'."

—*Speaking of Hancock's 'Letter of Acceptance.' in 1880.*

### A TRIAL IN A COURT OF JUSTICE

"A trial in a court of justice is a trial of many things besides the prisoner at the bar. It is a trial of the strength of the laws, of the power of the Government, of the duty of the citizens, of the fidelity to conscience, and the intelligence of the jury. It is a trial of those great principles of faith, of duty, of law, of civil society, that distinguish the condition of civilization from that of barbarism. I know no better instance of the distinction between a civilized, instructed Christian people, and a rude and barbarous nation, than that which is shown in the assertions of right, where might and violence and the rage of passion in physical contest, determine everything; and this last, sober, discreet, patient, intelligent, authorized, faithful, scrupulous, conscientious investigation, under the lights of all that intelligence with which God has favored any of us; under that instruction which belongs to the learned and accredited expounders of the law of an established free government; under the aid of, and yet not misled by, the genius of eloquence of advocates on either side." — *Opening speech in prosecution of the case of the 'Savannah Privateers,' indicted for piracy, tried in N. Y., 1861.*

Graduated at 19 at Yale, with Samuel J. Tilden, Morrison R. Waite, Benjamin Silliman, Edward Pierrepont, Professor Lyman, and others. Read law, and took a law course at Harvard. He has been counsel in



the three greatest cases in this country during his career —President Johnson's Impeachment, the Geneva Arbitration and the Hayes Tilden contest.

#### WM. M. EVARTS' TOAST

Evarts said, after a party of wise men had eaten a goose stuffed with sage —“Before dinner you saw a goose stuffed with sage; now, you see a sage stuffed with goose.”

#### A CANDID TRIBUTE

At a Yale dinner just as Evarts rose to speak the large sugar ornament in front of him fell over. Without a moment's hesitation he said—“Ah, gentlemen, this is a candid tribute I did not expect.”

#### ALL IN TRANSPORTS

At an Irving dinner, at which McCulloch and Florence were present, the two came up to Evarts and recalled to him a voyage they had made together. “In what ship was it?” asked someone. “I don't know,” said Evarts, “I only know that we were all in transports.”

#### THE VIRTUE OF VERMONT

Evarts once said, in a humorous reference to the virtue of Vermont, that nobody could be admitted into its prisons without a certificate testifying to his previous good moral character.

#### CONSISTENCY

“Hancock's declaring in favor of a full, free ballot, and a fair count, is about as consistent as the husband's killing his wife with the motto, ‘God Bless our Home,’ ” said Evarts in a campaign speech in 1880.

#### MARSHALL AND WEBSTER

“If I were to name two men whose services were incomparably above that of all others in making this new experiment of free government of paper constitutions, a living power to a great and strenuous nation — two that could not have been spared, though all others remained—I should say that to the great Chief Justice Marshall, and to the great forensic, popular, parliamentary defender and expounder of the Constitution, Daniel Webster, we most owe what we now enjoy.”

—*At the unveiling of the statue of Daniel Webster, in Central Park, N. Y., Nov. 25, 1876.*

#### CHARACTERIZATION OF EVARTS

“In humor, in adroitness, in judgment, in patience, in self-mastery, and in knowledge of law in its highest and broadest sense, Mr. Evarts, in our opinion, is *facile princeps*. He is five feet seven, thin and slender, with a face like parchment. Some one has said —‘He is head, nose, voice and forefinger’.”—*Albany Law Journal, during the Beecher-Tilton trial.*

#### A PARALLEL—EVARTS, PORTER, BEACH

“We confess that after quaking at the thunders of Beach, and growing feverish over the drama of Porter, it is refreshing to listen to the calm, clear logic of a man like Evarts. If one considers a case under Beach's



presentation, it is like looking on an object through a superior magnifying glass; when Porter presents it, you gaze through a variously stained glass window of many panes; when Evarts presents it, you see it through a broad, clear pane of French plate. We had feared, however, that Mr. Evarts would not appear to his best advantage in this trial. We had supposed that his proper and exclusive area was where grave Constitutional questions are dicussed—as for instance, on the impeachment trial of President Johnson. But his conduct of this case has been a surprise to us, as we dare say it has been to every one else. It seems to us that it has been faultless. In every point of view—he has exhibited the most varied and admirable talents of a lawyer. His cross-examination of Theodore Tilton, in our judgment, was an unequaled masterpiece; and his final argument, while it must yield to those of his brethren in brilliancy and declamatory force, must have left a deeper mark on the jury than theirs. Mr. Evarts' rhetoric is far from being a model—somewhat diffused and involved; but, in spite of all seeming disadvantages, he has the art to appear less an advocate and more a disinterested judge than either of his compeers."

—*'Three Great Advocates'* —*Albany Law Journal*, during the *Beecher-Tilton Trial*, 1875.

### EVARTS IN THREE GREAT CASES

Evarts has been counsel in the three greatest cases in this country, during his career—the Johnson Impeachment, the Geneva Arbitration, and the Hayes-Tilden contest. He was also counsel in the Lemmon slave case; the Parrish will case; the will of Mrs. Gardiner—the mother of President Tyler's widow; senior counsel for Henry Ward Beecher in the Beecher-Tilton six-months' trial, occupying eight days in his closing speech; for the prosecution of the Savannah Privateers, being opposed by James T. Brady; and in many other important causes. Received a \$50,000 fee for an opinion upon the Berdell mortgage against the Boston, Hartford & Erie Railway.

For Joseph H. Choate's Description of Evarts, as a Lawyer—see Choate.

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### MEN OF LETTERS

"What is literature and who are men of letters? From another point of view we are the most unprofitable of mankind—engaged mostly in blowing soap-bubbles. From another point of view we are the most practical and energetic portion of the community. If literature be the art of employing words skilfully in representing facts, or thoughts, or emotions, you may see excellent specimens of it every day in the advertisements in our newspapers. Every man who uses his pen to convey his meaning to others belongs to the community of letters. Nay, he need not use his pen at all. The speeches of great orators are among the most treasured features of any national literature. The orations of Mr. Grattan are the text-books in the schools of rhetoric in the United States. Mr. Bright, under this aspect of him, holds a foremost place among the men of letters of England."

—*James Anthony Froude*, at *Banquet of Royal Academy*, London, April 29, 1876.



## THOS. EWING (1789-1871), Ohio

### A TEN DOLLAR FEE

Ewing said when moneyless, at Athens, O., in 1816, for defending a boy for larceny, he was paid \$10 as a retainer. He went to Marietta, tried and cleared his boy, received an additional \$15, and retainers in 18 new cases.

"I have received several fees since of ten thousand dollars and upwards, but never one of which the value or in truth was as valuable to me as this of ten dollars."

Says Hugh McCulloch, in his "Men and Measures of Half a Century:" "The greatest lawyer the U. S. has produced west of the Alleghany Mountains."

John Welch, adds: "I always dreaded to see his name docketed for the defense when I was prosecuting attorney. For impetus, breadth, and logical force, he had few, if any equals."

### ESTOPPED BY EVIDENCE

"In the trial of a case, Mr. Ewing offered an item of evidence of doubtful competency, on a rather immaterial point, in an early state of the trial. His adversary objected, and sustained his objection by quite an argument. Mr. Ewing did not reply further than to say that there were 'authorities both ways' on the question. The Court rejected the evidence. When they came to the vital point in the case, it was found that the evidence of the same nature was a *sine qua non* to the adversary's case. Mr. Ewing claimed that his opponent was estopped by the former decision. The Court so ruled, and Ewing gained the case. In concluding his remarks, Mr. Ewing made the following quotation from some antiquated version of David's Psalms:—

'The wicked man he dag a pit,  
He dag it for his brother;  
And for his son *he* did fall in  
The pit he dag for t'other'."

—'Reminiscences of Thos. Ewing,' by John Welch —8 Mag. West Hist.

### CHARACTERIZATION OF EWING

"As a lawyer, Mr. Ewing was thoroughly grounded in legal principles; his reading was large and accurate, and he had among other things, mastered at an early day the science of special pleading, without which no man can be an accomplished lawyer in this country or England. He was a man of large attainments in many departments of study. In science, in general literature, especially poetry and history, his reading was extensive and thorough, and his memory so tenacious that the acquisitions of a lifetime seemed to be always at his disposal. He had great power of analysis, great force and closeness of logic, a wide range of illustration, and, while he lacked the minute graces and style and scholarship, he had a thorough knowledge and command of the English tongue. A marked peculiarity in which his greatness as a reasoner, like that of his contemporary, Webster, especially showed itself, was a faculty of logical statement of his case. His genius was eminently suggestive, setting other minds to work, and thus making his presence felt in every circle, however high or humble, in which he moved. He was a bold practitioner at the bar, relying, perhaps, sometimes too much upon a single blow in dis-



posing of a case; and in this respect his method was in striking contrast with that of many of the leading lawyers of his day. The labor of minute preparation and care of details were distasteful to him; and for these he relied, at all events for many years, upon the younger men associated with him; but his judgment upon the steps to be taken in the preparation of a case, and upon the case itself, were prepared, was almost unerring; and the presentation of a case to either court or jury, he had few equals, and no superiors, at the bar of either State or Nation. The deep foundations of his strength were laid in hard study, untiring industry, indomitable energy, and unflinching integrity and honor. \* \* \* Mr. Ewing was a man of warm and generous heart, of most affectionate and genial spirit among his family and friends, full of kindness and sympathy. The struggles of his early life had undoubtedly left their traces, and given a tinge of sternness to his manner, and a habit of self-reliance so pronounced and unmistakable, as to seem to those who only met him officially, like coldness and selfish isolation. But these were only appearances, upon the surface, while at heart he was a loving and true man, and the friend and companion of good men."

—*John W. Anderson, on behalf of the committee of the Ohio Supreme Court, upon Ewing's death—Jan. 9, 1872.*

#### W. T. SHERMAN ON EWING

"Mr. Ewing was a great big man, an intellectual giant, and looked down on religion as something domestic, something consoling, which ought to be encouraged; and to him it made little difference whether the religion was Methodist, Presbyterian, Baptist, or Catholic, provided the acts were 'half as good' as their professions."

—*From a letter from Gen. Sherman to T. DeWitt Talmage, in the latter's letter of condolence upon the death of Mrs. Wm. T. Sherman, who was a Catholic. (Edward Bok's 'The Americanization of Edward Bok,' 215).*

#### SOME CHARACTERISTICS

Thomas Ewing was admittedly the Nestor of the Ohio Bar, and stood in the front rank of the legal profession of the country. \* \* \* His great mind, his large acquirements, his peculiar mode of practice and his spotless moral character cannot but be profitable study for any lawyer. \* \* \* His arguments were perfect illustrations of the science of logic. He seemed to have an intuitive perception of the vital points of a case. His mind was 'massive and robust,' and his analytical powers seldom equaled. 'For impetus, breadth, and logical force,' he had few, if any, equals. \* \* He was not graceful as a speaker; his gestures were clumsy, but natural. He was not an orator in the popular sense; and yet, in a proper case, a case involving pathos, he could reach the heart, flush the cheek, quicken the pulse of the hearer and start the tear in his eye, equal to any speaker I ever heard. His long life was a life of study. He never forgot, but constantly reviewed, continued and enlarged his classics. Notwithstanding his large practice, he found time and strength to go over nearly the whole field of human knowledge. Hardly any subject escaped his research, and he had a memory that retained everything he acquired. He was an adept in the exact sciences, and a born mathematician. Was familiar with Shakespeare, Milton, Byron, and other English poets; at home in astronomy, history, zoology, anthropology, chemistry and physiology.—*The Author.*



## WILLIAM PITT FESSENDEN (1806-1869), Maine

### FINANCIAL IGNORANCE IN UNITED STATES SENATE

"I declare here today, that in the whole number of learned financial men that I have consulted, I never have found any two of them who agree; and, therefore, it is hardly worth while for us to plead any very remarkable degree of ignorance when nobody is competent to instruct us; and yet such is the fact. I can state to you, Mr. President, that on one day I was advised very strongly by a leading financial man at all events to oppose this legal tender clause; he exclaimed against it with all the bitterness in the world. On the very same day I received a note from a friend of his, telling me that we could get along without it. I showed it to him and he expressed his utter surprise. He went home and next day telegraphed me that he had changed his mind, and now thought it was absolutely necessary; and his friend who wrote to me, wrote again that he had changed his (laughter), and they were two of the most eminent financial men of the country."

—*William Pitt Fessenden, Congressional Globe, Feb. 12, 1862, p. 766.*

### JUSTIFICATION FOR ACQUITTING PRESIDENT ANDREW JOHNSON

"To the suggestion that popular opinion demands the conviction of the President, I reply that he is not on trial before the people, but before the Senate. The people have not heard it. They have not taken an oath to do impartial justice according to the Constitution and the the laws. I have taken that oath. I cannot render judgment upon their convictions, nor can they transfer to themselves my punishment if I violate my own. I shall consider myself undeserving of the confidence of that just and intelligent people who imposed upon me this great responsibility, and unworthy a place among honorable men, if for any fears of public reprobation, and for the sake of securing popular favor, I shall disregard the convictions of my judgment and conscience. The consequences that may follow from conviction or acquittal are not for me, with my convictions, to consider. The future is in the hands of Him who made and governs the universe, and the fear that He will not govern well would not excuse me for a violation of His law."

—*Wm Pitt Fessenden, of Maine, May 16, 1868.*

### BLAINE ON FESSENDEN

"Fessenden was brilliant from his youth upward; had led the Maine legislature when but a few years beyond his majority; and at a time when members of the legal profession are struggling for a first foot-hold, he had stepped to the front rank in the Bar of Maine."

Again, he says:—

"He was one of the ablest lawyers that has sat in the Senate since Webster."

—*1 Twenty Years of Congress, 315-16; and 2 Twenty Years of Congress, 379.*

### JAMES FORD RHODES' TESTIMONY

"Fessenden established himself finally permanently in the practice in Portland Me. He achieved high standing in his profession. His



arguments impressed the judge and yet were direct and concise, rarely three-quarters of an hour in length. He argued cases in the United States Supreme Court, and had the honor of making an argument which contributed to the reversal of Justice Story, (*Veazle v. Williams*, 8 Howard, 134.)"—5 *Rhodes's History of the U. S.*, 591.

### GIDEON WELLES' CRITICISM

"His (Fessenden's) is a secondary mind. He is a good critic or fault-finder, not without good qualities, but has little administrative ability, lacks independence, self-reliance and force."—2 *Welles's Diary*, 638.

### A CONSTRUCTIVE STATESMAN

Someone has said, "Fessenden was one of the greatest constructive statesmen of his time—that of the Civil War—and efficiently aided Secretary Chase, of the treasury, though to his credit, he opposed the Legal Tender Act."

And Sumner said of him:—

"All that our best generals were in arms, he was in the financial field."

And Lyman Trumbull:—

"As a debater, engaged in the current business of legislation, the Senate has not had his equal in any time."

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### THE AGE OF RESEARCH

"I rejoice in an occasion like this which draws the attention of the world to topics which illustrate the union of art with literature and of literature with science, because you have a hard race to run, you have a severe competition against the attraction of external pursuits, whether those pursuits take the form of business or pleasure. It is given you to teach lessons of the utmost importance to mankind, in maintaining the principle that no progress can be real which is not equable, which is not proportionate, which does not develop all the faculties belonging to our nature. If a great increase of wealth in a country takes place, and with that increase of wealth a powerful stimulus to the invention of mere luxury, that, if it stands alone, is not, never can be, progress. It is only that one-sided development which is but one side of deformity. I hope we shall have no one-sided development. One mode of avoiding it is to teach the doctrine of that sisterhood you have asserted today, and confident I am that the good wishes you have expressed on behalf of literature will be re-echoed in behalf of art wherever men of letters are found."—*W. E. Gladstone, at banquet of the Royal Academy, May 5, 1877.*



## DAVID DUDLEY FIELD (1805-1894), New York

### AMERICAN PROGRESS IN JURISPRUDENCE

"We began with asserting the sovereignty of the people. This was done by the Declaration of Independence in 1776. \* \* \* In our country this supreme power is divided between the Union and the States, but so much of it as has been given to the former was given by the latter. The result is, that Congress is not sovereign, nor is the President sovereign, nor is the Judiciary sovereign; nor, indeed, are all three combined sovereign. They may exercise their part of the sovereign power, but it is only by delegation that they exercise their part at all. On the other hand, the reserved powers are all with the separate States (or the people thereof,) so that we have in fact a divided sovereignty, but none the less is it true, that sovereignty in this country resides with the people, partly in all the States united, and partly in the several States—'*E pluribus unum.*'

"Following the primal and fundamental principle of sovereignty in the people, and consecrated by it, are certain rights pronounced inherent in every human being, to be lost only for crime: the right of life; the right of liberty; the right to worship God as conscience dictates; the right to choose one's home wherever he can find it; the right to speak and write freely; and the right to labor when, where, and for such reward as the laborer and his employer may agree to between themselves. Under the influence of these great principles, our political system, State and national, has been built; a fabric purely American, without precedent in the past and ready for further development in the future. \* \* \* The United States have placed their constitution beyond the reach of executive or legislative power. The President may act and the Congress may act, but the judiciary may decide after all, whether the act is authorized by the constitution. Never before in any constitutional government was the organic law put under the guardianship of the judiciary. This is a feature purely American, and of value incalculable for the protection of individual rights.

"In the category of these individual rights I conceive that the greatest achievement ever made in the cause of human progress is the total and final separation of the State from the Church. If we had nothing else to boast of, we could claim with justice that first among the nations we of this country made it an article of organic law that the relations between man and his Maker were a private concern into which other men had no right to intrude.

"\* \* \* Besides this great act of deliverance, we have emancipated woman from the dominion of her husband; we have freed the honest debtor from the possibility of passing his life in prison; we have rendered it impossible for legislation to make that act a crime which was not a crime when it was committed; we have forbidden the States to impair the obligation of a contract between man and man; we have proclaimed from sea to sea that all men are created equal in rights, and that among these rights are the rights of life, liberty, and the pursuit of happiness; we have imbedded in the fundamental law of the land as principles inviolable and eternal, that no man can be deprived of these rights without due process of law, and that all are entitled to the equal protection of the laws."

—*Before the Columbian Exposition, in Chicago, 1893.*

LINCOLN: "Lincoln was the most-sided man, I think, I ever met."

TILDEN: "His was one of the keenest, analytical minds I have ever known."

GREELEY: "Greeley was a very great man in some ways, and a very weak one in others."



## JUSTICE

"Above all things is justice. Success is a good thing; wealth is good, honor is better; but justice excels them all. It is this which raises man above the brute, and brings him into communion with his Maker. To be able to stand impartial in judgment amid circumstances which excite the passions; to maintain your equipoise, however surging the currents around you, is to have reached the highest elevation of the intellect and the affections. To have the power of forgetting, for the time, self, friends, interests, relationship, and to think only of doing right toward another, a stranger, an enemy, perhaps, is to have that which man can share only with the angels, and with Him who is above men and angels."

—*From speech in the Wm. M. Tweed case—a suit for \$6,000,000, in 1865.*

## U. S. SUPREME COURT PRESUMED TO KNOW THE LAW

"We are compelled to know, or are supposed to know—but I am very sorry to say we don't know at all—the law. We are supposed to take judicial cognizance of all questions of international law, of treaties, of prize laws, and of the laws of nations generally. We take notice of it without its being specially pleaded. We take notice of the laws and statutes of every State of these thirty-eight states of the Union. They are not to be proved in our courts; they are not brought in issue, but the judge of the Federal courts, from the lowest one to the highest, is supposed to take judicial cognizance of all the statute laws, and to know them, of the whole thirty-eight states of the Union, and of the eight Territories besides. In addition to that, we are supposed to take notice of the common law of the country. We take notice of the equity principles, and we apply them now in separate courts notwithstanding you have combined them in your processes in the state courts. We are supposed to understand the civil law on which Texas and Louisiana have framed their systems of laws; and we are supposed to understand all the other laws, as I said, of the States, divergent and varied as they are. We do the best we can to understand them; but, gentlemen, permit me to say that, but for the bar which practices before us; but for the lawyers who come up from New York and Pennsylvania, and from the States of the West and of the South, to tell us what the law is; but for the instruction and aid which they afford us, our duties would be but poorly fulfilled.

"I take pleasure in saying that a bar or set of men superior in information, in the desire to impart that information to the court, a set of gentlemen in the legal profession more instructive in their arguments, could hardly be found in any country in the world. I doubt whether their equals are found, when you consider the variety of the knowledge which they must present to us, the topics which they discuss, the sources from which they derive the matter which they lay before us. I say that it is with pleasure that the court relies upon the lawyers of the country to enable it to preform its high function."

—*Mr. Justice Samuel F. Miller, before N. Y. State Bar Ass'n, Albany, N. Y., Nov. 20, 1878.*



## JUSTICE STEPHEN J. FIELD (1816-1899), California

### THE U. S. SUPREME COURT—THE BULWARK OF THE REPUBLIC

"As I look over the more than a third of a century that I have sat on this bench, I am more and more impressed with the immeasurable importance of this Court, now and then we hear it spoken of as an aristocratic feature of a republican government. But it is the most democratic of all. Senators represent their States, and Representatives their constituents, but this Court stands for the whole country, and as such it is truly 'of the people.' It has, indeed, no power to legislate. It cannot appropriate a dollar of money. It carries neither the purse nor the sword. But it possesses the power of declaring the law and in that is found the safeguard which keeps the whole mighty fabric of government from rushing to destruction. This negative power, the power of resistance, is the only safety of a popular government, and it is an additional assurance when the power is in such hands."—*Justice Stephen J. Field.*

Judge Field's term upon the Supreme Bench exceeded that of Chief Justice Marshall by a month and 10 days, as Judge Field served 34½ years, and with his 6 years as Supreme Judge of the State of California, served 40½ years as Supreme Judge of State and Nation.

Justice Field once said to J. S. Black: "You had better look to your laurels, for that little Jew from New Orleans, Judah P. Benjamin, has stated your case out of court."

### FIELD WAS CRITICAL, RATHER THAN CONSTRUCTIVE

"Judge Field's powers were critical rather than constructive. He acted principally as a curb or check upon the centralizing tendencies of his associates, being the most powerful advocate in the court of the doctrine of state, that is, of local government as far as was consistent with national strength."

—*Horace Stern, on Justice Field, 7 'Great Am. Lawyers,' 53.*

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### KINDS OF ORATORY

"Wendell Phillips was a rhetorical orator; John B. Gough and Henry Ward Beecher dramatic orators. Charles G. Finney demonstrated to me that one could be an effective speaker without being either rhetorical or dramatic."—*Abbott's Reminiscences, 220.*



## JOHN FITZGIBBON, LORD CLAIRE (1749-1802,) Ireland

### INCOME

From 1772 to 1789 (17 years), Fitzgibbon received from his profession \$230,000. In 1782, his income was \$33,570. He fought a duel with Curran in the early part of his career.

—1 *Shiel's 'Sketches of the Irish Bar,'* 67 note.

### SHOUTS OF JOY OVER HIS COFFIN

“When he was buried in Ireland, three shouts of joy were given over his coffin; he had threatened to make the Irish people ‘tame as cats,’ and the exasperated thousands who gladly witnessed the close of his career flung heaps of dead cats upon his coffin.”

—1 *Shiel's 'Sketches of the Irish Bar,'* 132, note.

### LECKY ON LORD CLAIRE

“He was a ready and powerful debater, and a man of great personal courage and force of character, but he never seems to have been suspected, even by his friends, of any patriotic feelings; his intellect was narrow and intolerant, and his temper ungovernably violent. He had been at one time considered a Liberal, and owed his promotion in a great degree to Grattan, whom he afterwards attacked with the utmost virulence. Like many Irishmen of the later time, he had the habit of constantly depreciating and villifying his country—‘our damnable country’—as he described it in a letter to Lord Castlereagh,—and he was a bitter enemy of the Catholics. He was remarkable for an arrogance of tone, which in debate is said sometimes to have almost verged upon insanity, and for the reckless manner in which he displayed his personal antipathies upon the bench; and he scandalized the Irish Parliament by the perfect frankness with which he justified a policy of corruption, and the English House of Lords, by his apology for the use of torture against the rebels of 1798. Probably no Irishman of his generation was so hated, and when he died the popular delight broke out (as it afterward did in England, at the death of Castlereagh) in a kind of hideous carnival around his coffin. He was, however, quite capable of generous actions, and showed on one or two occasions real humanity toward State prisoners in 1798; and his rare skill in stating a case, and his indomitable courage in meeting opposition, made him extremely useful to the Ministry. For many years he was almost absolute in the House of Lords, and after Lord Castlereagh he contributed most to passing the Union. It is, however, curiously illustrative of the tortuous skill with which the Administration of Pitt was conducted, that Claire, when apparently the very leader of the Ministerial party, was kept in complete ignorance of the secret overtures that were made to the Catholic prelates, and the intentions of the Minister to make the Union the prelude to emancipation.”

—*Lecky's 'Leaders of Public Men in Ireland,'* 166.

(See under “Curran,” his denunciation of Lord Claire, under the caption—“Minion of Authority.”)



## JOHN H. FLANIGAN (1857-1915) Missouri

### "BEWHISKERED KANSAS IN 1910"

Carthage, Mo., Aug. 15, 1910.

"Mr. A. G. Hanback,  
Baxter Springs, Kansas.

Dear Sir:

I have yours of the 15th instant, in which you invite me to attend and deliver an address at your reunion on August 31.

It is always a pleasure to be so remembered and for this action on your part I express my thanks.

But I would not fit the 'spot' in Kansas this year.

I spoke at your reunion in 1896 when Kansas was on one of her periodical 'jags.' Then it was free silver and populism. I think I need not remind you that my talk did not please every Kansan who heard it; and this year, when Kansas is libeling the party of Lincoln, Grant and McKinley by running a lot of free trade populist nondescripts on the Republican ticket for Congress, I should, I am sure, please certain Kansans less, if possible, than I did in 1896, if I expressed my opinion as I should vote, this year were I an elector in certain Kansas districts.

I have seen Kansas elect a Leedy for governor.

I have seen Kansas prefer a lot of hair and whiskers (the name I have forgotten) over the immortal Ingalls.

I have seen Kansas cast her electoral vote for Bryan over the martyred McKinley.

I have seen Kansas almost deify Mary Ellen Lease, and shout herself hoarse for Jim Weaver and the Rag Baby.

I see Kansas, alleged Republican Kansas, this year fanning the dying embers of Bryanism—the guaranty of bank deposits—while Republican America is striving to guaranty the citizens in having something to deposit.

I have seen Kansas follow every idiotic 'ism' which has come to the surface in my generation. I have seen Kansas drunk before; this year over her Bristows and Murdocks she is maudlin.

No! this year I have nothing in common with Kansas. Wait till she gets sober; wait till a two-year-old sells for seven dollars; till a full-grown hog is worth two dollars; till wheat sells for forty cents a bushel, and corn is worth ten cents: then Kansas will come rushing back to the Grand Old Party for relief, and swear she has been leading all the time.

Kansas is never thoughtful till she's 'broke,' then more than half the time she only thinks she's thinking, and is mistaken about it.

Yours truly,

John H. Flanigan."

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### THOUGHT

"The sober second thought of the people is seldom wrong."

—*Martin Van Buren.*

Martin Van Buren, of N. Y. (1782-1862) was known as "a northern man with southern principles." "The Little Magician." His early practice made him financially independent. Was an early disciple of the Clintons, Robt. R. Livingston and Aaron Burr, and later of Andrew Jackson. President of the U. S. 1837-1841.



## SIR WILLIAM FOLLETT (1798-1845), England

### HIS VERSATILITY

"Mr. Follett exhibited at the English Bar what was considered the most remarkable professional versatility of our times."

—*Geo. T. Curtis—in Memoirs of R. B. Curtis, 96.*

(See Notice of Follett, Brougham's Works, Vol. 6; also Britannica).

### HIS EPHEMERAL CAREER

After reviewing Follett's professional career, Talfourd, his friend in his 'Vaction Rambles,' usually pronounced so brilliant, mournfully inquires:

"What remains? A name dear to the affections of a few friends; a waning image of a modest and earnest speaker, though decidedly the head of the common law bar; and the splendid example of a success embodied in a fortune of 200,000 pounds (\$1,000,000), acquired in ten years, the labors of which hastened the extinction of his life; these are all the world possesses of Sir William Follett. To mankind, to his country, to his profession, he left nothing; not a measure conceived, not a danger averted, not a principle vindicated; not a speech intrinsically worth preservation; not a striking image, nor an affecting sentiment; in his death the power of mortality is supreme. How strange—how sadly strange—that a course so splendid should end in darkness so obscure!"

(See Judge John F. Dillon's article in Sep.-Oct. American Law Review—the same being delivered by Judge Dillon, before Am. Bar Ass'n., at Saratoga, N. Y., Aug. 22, '94—on 'The Contrast between Follett and David Dudley Field.')

### LORD COLERIDGE ON FOLLETT

"With Follett I had more familiar relations. I saw his whole course, standing near to it in its commencement and up to my quitting the bar. I was deeply interested in observing it, and I early predicted his future eminence. No man, I suppose, ever heard or desired to have access more complete in proportion to the time he was in the profession; had his health been continued to him, he would have filled entirely the place at the bar which Sir James Scarlett had left, and I think *still leaves unfilled*; he wanted his literature, his science, his variety of legal learning, and his great experience, not only in legal practice, but in general life; but he was his equal in the ready appreciation of facts and in the soundness of his legal principles. He would, I think, have become even a better speaker, for he was equally natural and apparently free from artifice, and yet he was more capable of earnest and sustained declamation: his voice was sweet, his action good. Neither as a lawyer nor as a legislator has he left any lasting monument behind him of his great abilities; the gainful business of the day swallowed him up. Like 'a well-graced actor,' the admired one of his day, he lives only in the recollections of one fleeting generation who saw him. We have a distinct idea of him as our fathers had of Garrick; henceforward a mere tradition of him as our fathers had of Garrick; henceforward a mere tradition of him will remain—tradition becoming every year more uncertain, obscure, indiscriminate."

—*12 Am. Law Review—Article upon Scarlett, by C. H. Hill, p. 57.*



## JOSEPH BENSON FORAKER (1846-1917), Ohio

### PRESIDENT'S FOUR-YEAR TERM BEST

"Ex-President Taft is reported in the newspapers (Feb., 1915) as making speeches and delivering addresses and lectures in different parts of the country in which among other things he has been advocating a seven years' Presidential term; from this it appears that in spite of all his instructive experience, he has not yet become a good judge of the proper psychological moment for bringing forward new propositions; for at the very moment when he is again bringing this subject to notice the great majority of the American people are impatiently counting the days until there will come another opportunity for making a change of Presidents and policies. Some unforeseen event may change all this; all things are possible; especially to the party in power and able to take advantage of constantly arising opportunities to respond to public sentiment, but the probability is that the score against President Wilson is now too long for him to have enough good luck to overcome it. It is true Presidential elections are bothersome and expensive, but it is also true that now and then people would gladly pay for the privilege of holding such an election, if they did not have it secured to them by the Constitution, any price, almost, that the wildest imagination might name. It was so under Cleveland. It is so now, under Wilson. It has been so a number of other times. Elections cost millions; but there come times when they are worth hundreds of millions. If today we had to wait five more years instead of two, before we could have a Presidential election, it would be hard to exaggerate the despondency, gloom and despair with which the minds of our business men would be filled—except those who have 'war orders.'

"But there is a great compensation for the trouble and cost of our elections, aside from all money or business considerations in the fact that they are not only educational as to the issues involved, but also wholesome in a patriotic sense; on account of this feature they are not only invaluable, but indispensable in a free popular government. George Washington and his compatriots who constituted the Convention that framed our organic law were a wise, conscientious and patriotic body. They knew what they were doing when they fixed the respective terms for the offices they created. The passing years continually admonish us to make haste slowly in changing their work."

—*Joseph Benson Foraker, O., (1846-1917).*

"Enlisted as a private in an Ohio regiment at 16, and served till the close of Civil War; graduated at Cornell, at 23; began practice of the law, at 33; was judge of the superior court, Cincinnati, '79 to '82; Governor of Ohio, '85-'87; elected to U. S. Senate, '96, and re-elected 1902; delegate from O. in all national conventions from '84 to 1900, and chairman from '84 to '88; in 1896 and 1900, nominated McKinley for President; opposed legislation against corporations in Senate; was a bitter critic of President Cleveland's proposal to restore the Confederate flags to their regiments, and became known as 'fire-alarm' Foraker."

—2 '*Notes of a Busy Life,*' pp. 3-4.



## CHAS JAS. FOX (1749-1806), England

LORD THURLOW: "No man is so wise as Lord Thurlow looks."  
—*Chas. Jas. Fox.*

Says Chas. James Fox: "Dunning, in 1778 (then 47) was the greatest practicing lawyer then alive in England."

### WHEN HE CEASED GAMBLING

"At the age of 25, Fox ceased to gamble, lived contented within his slender means, as he had despoiled himself of a younger son's landed estate. His home life with the woman he loved—both before and after he married her—was admired by his unconscious contemporaries as a model of domestic affection and mutual sympathy in the insatiable enjoyment of good literature and great rural pleasures."

—*Trevelyan's Life of George III., and Charles Fox.* 37.

### GIBBON'S MEETING WITH FOX

"When Fox was about forty he paid a visit to Gibbon, in his pleasant hermitage at Lausanne, Switzerland, and the historian who had conversed with most English, and not a few European celebrities, and who knew all that could be told in books about the best and greatest men of many ages and countries—declared that no human being was ever more perfectly exempt than Mr. Fox from the taint of malevolence, vanity and falsehood."

—1 *Trevelyan's Life of Geo. III., and Fox,* 37.

### USED NO ARGUMENT—EXCEPT IT WAS JUST AND WEIGHTY

"Fox's nature was such that he instinctively refrained from using in controversy any argument which he himself did not believe to be just and weighty, and his fairness and sincerity carried persuasion to others."

—1 *Trevelyan's Life of Geo. III., and Charles Fox,* 87.

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### ROMAN HISTORY

"I wish I could spend three months instead of three weeks here (in Rome). I should like to get out of my library Mommsen's 'History of Rome' to revive my knowledge of its general history, Froude's 'Caesar' to give me a picture of the city in the first century, Gibbon's 'Decline and Fall' to carry the picture down to the time of Marcus Aurelius, Bryce's 'Holy Roman Empire' to recall the part played in the first few centuries of the Christian era, Creighton's 'History of the Popes' to re-read his description of its social and religious condition under the Borgias, Lanciam's 'New Tales of Old Rome' to connect all this history with its present topography and remains, and Countess Cesaresco's 'Liberation of Italy' to bring before me in brief its most recent political history. Probably this would only whet my appetite for a much more thorough study than would be possible with only these books and only three months to study in."

—*Lyman Abbott's 'Impressions of a Careless Traveler',* 151-2.



## WM. P. FRYE (1831-1911), Maine

### WM. P. FRYE'S NOMINATION OF BLAINE, AT CHICAGO, ILL., 1880

"I once saw a storm at sea in the night-time; an old ship battling for its life with the fury of the tempest; darkness everywhere; the winds raging and howling: the huge waves beating on the sides of the ship, and making her shiver from stern to stern. The lightning was flashing, the thunders rolling; there was danger everywhere. I saw at the helm, a bold, courageous, immovable, commanding man. In the tempest, calm; in the commotion, quiet; in the danger, hopeful. I saw him take that old ship and bring her into her harbor, into still waters, with safety. That man was a hero. I saw the good old ship of State, the State of Maine, within the last year, fighting her way through the same waves, against the dangers. She was freighted with all that is precious in the principles of our republic; with the rights of American citizenship, with all that is guaranteed to the American citizen by our Constitution.

"The eyes of the whole nation were on her, and intense anxiety filled every American heart lest the grand old ship, the 'State of Maine' might go down beneath the waters forever, carrying her precious freight with her. But there was a man at the helm, calm, deliberate, commanding, sagacious; he made even the foolish man wise; courageous, he inspired even the timid with courage; hopeful, he gave heart to the discouraged, and he brought that good old ship safely into harbor, into safety; and she floats today greater, purer, stronger for her baptism of danger. That man, too, was heroic, and his name was James G. Blaine.

"Maine sent us to this magnificent convention with a memory of her own salvation from impending peril fresh upon her. To you representatives of 50,000,000 of the American people, who have met here to counsel how the Republic can be saved, she says:—'Representatives of the people, take the man, the true man, the staunch man, for your leader who has just saved me, and he will bring you to safety and certain victory.'"

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### CHANCELLOR REUBEN H. WALWORTH ON COAL-DUST NUISANCE

"The allegation in the bill of this subject, tho it is a little poetical, cannot be considered a mere poetic fiction, as it is sworn to by the complainant, and is admitted by the demurrer. He there states that large quantities of volatile and offensive dust and smut from the coal rise in the air, and are diffused by the wind into the premises of the neighboring inhabitants. And in spite of all their care, such coal dust and smut not only settles upon their walks and their grass plats, but also on their fragrant plants and flowers, 'beclouding the brightness and beauty which a beneficent Creator has given to make them pleasant to the eye, and cheering to the heart of man.' But what must be still more offensive to the ladies of the neighborhood, 'this filthy coal-dust settles upon their doorsteps, thresholds and windows, and enters into their dwellings, and into their carpets, their cups, their kneading-troughs, their beds, their bosoms and their lungs, discoloring their linen and their otherwise stainless raiment and robes of beauty and comfort, defacing their furniture and blackening, besmearing and injuring every object of utility, of beauty and of taste.' Making all due allowance for the coloring which the pleader has given to this naturally dark picture, it is perfectly certain that this keeping of a coal-yard upon any of these lots is a business offensive to the neighboring inhabitants, according to the spirit and intent of these restrictive covenants."—*Barrow v. Richard*, 8 Page, 360-1, 1840.



## MELVILLE W. FULLER (1833-1919), Illinois

### SAMUEL J. TILDEN EULOGIZED

"Since the days of Jefferson and Franklin this country has not had a statesman whose pen could delineate so accurately and so simply a principle, a policy, or a line of conduct. What the people need is somebody who can tell them with accuracy and simplicity just what they themselves think. This is the secret of Mr. Tilden's great popularity with the masses, the existence of which eminent jackasses in our party have often denied, and do not seem to comprehend now that they are beginning to be driven to concede it. There are always political prophets (I don't mean to speak irreverently) looking for power in the wind, or the earthquake, or the fire, instead of the still, small voice. Now, the question of Mr. Tilden's health presents itself about which I know absolutely nothing. His age is no objection. Cato learned Greek at eighty, and Goethe completed 'Faust' after he had passed eighty, Taney and Shaw delivered judgments when nearly ninety. Look at John Quincy Adams and Gladstone and 'Old Palm.' Why, Lord Palmerston at the age of eighty saved his administration by a masterly speech delivered without a note, in the early hours of the morning. And speaking of him, McCarthy, in his 'History of our Own Times,' commences the chapter on the death of Lord Palmerston with the quotation, 'Unram, Eros, the long day's task is done and we must sleep.' Mr. Tilden's days have not been so long by eleven years. Is his task done? The unfinished window in Aladin's tower must not remain unfinished. The art of prolonging life lies in an object to be attained. I admit that various things are to be taken into consideration as assisting in sustaining health, and in that way prolonging mere existence; but all these, while mere adjuncts to vegetation, really amount to nothing if there be not a sufficient object for living outside of keeping one's self on this side of the river. I can conceive of no higher object than the attainment of the Chief Magistracy with the view of benefiting the people of this Republic. Here I do Mr. Tilden justice. He is now at an age when he doubtless feels that merely being President is in itself vanity. That doll is stuffed with saw-dust, just as all other dolls are found to be by all men, children of a larger growth. But, if he can, by being President, benefit this people by saving their institutions, now in utmost peril, by reforming the methods of administration, by teaching both the great parties, and, in an especial degree, his own, that adherence to principle is as desirable in a party as in an individual, etc., etc., is that not an object worthy the attainment of any man? And is it not an object that would prolong life, and not bring it to termination? I am very much mistaken, if renomination and election, and administration would not do Mr. Tilden good. \* \* \* Napoleon said—'Imagination rules the world,' and you may depend upon it, that sentiment cuts no inconsiderable part in all elections. It must be taken in solution, it is true, but it is a necessary ingredient. Apart from the necessity of the 'old ticket,' it has great strength because it *is* the old ticket. There is a certain sense of justice that has gone unsatisfied since March, 1877, and you blunt its edge, if you change the ticket."

—*Letter to W. H. Barnum, Chairman of the Nat'l Democratic Committee, Chicago, Dec. 23, 1883; 2 'Tilden's Letters and Literary Memorials,' 635-8.*

Mr. Fuller was born in 1833, in Augusta, Me., of a family of legal antecedents; graduated at Bowdoin, in 1853, and studied law at Harvard; from 1855 to 1858 he practiced law in Augusta; was city attorney and



member of the common council, and editor of the *Augusta Age*, a rival of Jas. G. Blaine's *Kennebec Journal*; removed to Chicago in 1856; was a member of the Ill. Constitutional Convention; acted as delegate to the Democratic Nat'l Convention, 1864, 1872, 1876, and 1880. In 1876 he nominated Thos. A. Hendricks to a place on the ticket with S. J. Tilden. He defended Rev. Dr. Cheney when tried for heresy; in 1888, he was appointed Chief Justice of the U. S. Supreme Court, which he held till death—twenty-two years.

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### THE SUPREME COURT OF THE UNITED STATES

"The supreme Court of the United States, if it is nothing else, certainly is a hard-working court. It is a court of which a great deal is required; and is some solace for the hard work that we have to do, that we are supposed to be a court of a good deal of dignity and of a very high character. I hope you all concur. Just consider what the jurisdiction of that court is. There have come before that court often, States—States which in the old ante-bellum times we called 'Sovereign States'—and some of them did not come voluntarily. They were brought by the process of that court. And when one State of the Union has a question of juridical cognizance against another State of the Union, it must come to that court. A subpoena is sent, and it is brought into that court just like an individual, and it must, by the constitution of this country, submit its rights and territorial jurisdiction, and the right which accompanies that territorial jurisdiction, to the decision of that Supreme Court. Except the great court which sat on Mount Olympus, I know of no other which has ever had the right to decide, and compel States to submit to its decision. It is within our province to declare a law of one of these sovereign States; and that is a function of daily occurrence. What other court in the world has that power? To what other court has ever been submitted such a function as that—to declare the legislation of a State like New York, with five millions of population, and other States verging upon the same amount of population and wealth, to declare that the laws which you have passed in the ordinary discharge of your powers as legislators, are null and void? It is a great power. We not only do that, but we decide that the laws which the Congress of the United States shall pass are void, if they conflict with that instrument under which we all live and move and have our being. Though we approach these subjects with regretful hesitation, it is a duty from which the court has never shrunk, and from which I presume it never will shrink as long as that court has its existence."

—Justice Samuel F. Miller, at banquet at N. Y. State Bar Ass'n, at Albany, N. Y., Nov. 20, 1878



## JAMES A. GARFIELD (1831-1881), Ohio

### SOCIETY

"Society resembles the waves of the ocean, whose every drop may move freely among its fellows, and may rise toward the light until it flashes on the crest of the highest wave."—*James A. Garfield.*

### "GOVERNMENT STILL LIVES"

"Fellow-citizens —Clouds and darkness are round about Him. His Pavillion is dark waters and thick clouds of the skies. Justice and judgment are the establishment of his throne. Mercy and truth shall go before his face. God reigns, and the government at Washington still lives."

—*At a meeting in front of the Merchants' Exchange, N. Y. City, Apr. 15, 1865 —the day of Lincoln's death. (The effect of this speech was instantaneous in quieting the mob.)*

### A RADICAL

"I am trying to do two things —dare to be a radical and not be a fool: which if I may judge by the exhibitions around me, is a matter of no small difficulty."

### GARFIELD NOMINATING SHERMAN

"I have seen the sea lashed into a fury and tossed into a spray, and its grandeur moves the soul of the dullest man. But I remember that it is not the billows, but the calm level of the sea from which all heights and depths are measured. When the storm has passed and the hour of calm settles on the ocean, when sunlight bathes the smoother surface, then the astronomer and surveyor takes the level from which he measures all terrestrial heights and depths.

"Gentlemen of the convention, your present temper may not mark the healthful pulse of our people. When our enthusiasm has passed, when the emotions of this hour have subsided, we shall find the calm level of public opinion below the storm from which the thoughts of a mighty people are to be measured, and by which their final action will be determined. Not here in this brilliant circle where 15,000 men and women are assembled, is the destiny of the Republic to be decreed; not here, where I see the enthusiastic faces of 756 delegates waiting to cast their votes into the urn and determine the choice of their party; but by the 4,000,000 Republican firesides, where the thoughtful fathers, with wives and children about them, with the calm thoughts inspired by love of home and love of country, with the history of the past, the hopes of the future, and the knowledge of the great men who have adorned and blessed our nation in days gone by—there God prepared the verdict that shall determine the wisdom of our work tonight. Not in Chicago in the heat of June, but in the sober quiet that comes between now and the melancholy days of November, in the silence of deliberate judgment will the great question be settled. Let us aid them tonight. \* \* \*

"Now, gentlemen, I am about to present a name for your consideration—the name of a man who was the comrade and associate and friend of nearly all those noble dead whose faces look down upon us from these walls tonight; a man who began his career of public service twenty-five years ago, whose first duty was courageously done in the days of peril on the plains of Kansas, when the first red drops of that bloody



shower began to fall which finally swelled into the deluge of war. He bravely stood by young Kansas then, and, returning to his duty in the national legislature, through all subsequent time, his pathway has been marked by labors performed in every department of legislation. You ask for his monuments. I point you to twenty-five years of national statutes, not one beneficent statute has been placed in our statute-books without his intelligent and powerful aid. \* \* \* The great fiscal affairs of the nation, and the great business interests of the country, he has guarded and preserved, while executing the law of resumption and affecting its object without a jar and against the false prophecies of one-half the press and all the Democracy of this continent. He has shown himself able to meet with calmness the great emergencies of the Government for twenty-five years. He has trodden the perilous heights of public duty, and against all the shafts of malice has borne his breath unharmed. He has stood in the blaze of 'that fierce light that beats against the throne,' but its fiercest ray has found no flaw in his armor, no stain on his shield. I do not present him as a better Republican or as a better man than thousands of others we honor, but I present him for your deliberate consideration. I nominate John Sherman of Ohio."

—*Jas. A. Garfield, in National Republican Convention at Chicago, June, 1880. The above is part of the speech that made Garfield, himself, President.*

### INDEPENDENCE IN POLITICS

"The flowers that bloom over the garden wall of party politics, are the sweetest and most fragrant that bloom in the gardens of the world."

### THE GERM OF GOVERNMENT

"Whence came the immortal truth of the declaration? To me this was for years the riddle of our history. I have searched long and patiently through the books of the doctrinaires to find the germs from which the declaration of Independence sprang. I find hints in Locke, in Hobbes, in Rousseau, and Fenelon; but they were on the hints of dreamers and philosophers. The great doctrines of the Declaration germinated in the new influences of this wilderness world, by the same subtle mystery which brings forth the rose from the germ of the rose tree. Unconsciously to themselves, the great truths were growing under the new conditions, until, like the century plant, they blossomed into the matchless beauty of the Declaration of Independence, whose fruitage, increased and increasing, we enjoy today."—*In the Senate of the United States.*

### "IT CAN'T BE DONE"

"Dr. Lardner wrote an able treatise to prove that it was impossible to navigate the ocean by steam. He said that no ship could carry coal enough to steam across the Atlantic; that it was one of the mathematical impossibilities. But, it is an interesting fact that the proof-sheets of his scientific work were brought to the United States in the first steamer that crossed the Atlantic."—*In speech by Garfield.*

### JAS. G. BLAINE'S EULOGY

"As the end drew near, his early craving for the sea returned. The stately mansion of power had been to him the wearisome hospital of pain, and he begged to be taken from his prison walls, from its oppressive, stifling air, from its homelessness and its hopelessness. Gently, silently, the love of a great people bore the pale sufferer to the longed-for healing



of the sea, within sight of its heaving billows, within sound of its manifold voices. With wan, fevered face, tenderly lifted to the cooling breeze, he looked out wistfully upon the ocean's changing wonders; on its far sails, whitening in the morning light; on its restless waves, rolling shoreward to break and die beneath the noonday sun; on the red clouds of evening, arching low to the horizon; on the serene and shining pathway of the stars. Let us think that his dying eyes read a mystic meaning which only the rapt and parting soul may know. Let us believe that in the silence of the receding world he heard the great waves breaking on a further shore and felt already upon his wasted brow the breath of the eternal morning."

—*In the House of Representatives, Feb. 27, 1882. Blaine was then Garfield's Secretary of State.*

### A CHILD'S EDUCATION

"That man will be a benefactor of his race who shall teach us how to manage rightly the first years of a child's education. I, for one, declare that no child of mine shall ever be *compelled* to study one hour, or to learn even the English alphabet, before he has deposited under his skin at least seven years of muscle and bone."

—*From an Address on College Education, at Hiram College, O., June 14, 1867.*

### MONEY

"Money, which is a universal measure of value and a medium of exchange, must not be confounded with credit currency in any of its forms. Nothing is really money that does not of itself possess the full value which it professes on its face to possess. Length can be measured only by a standard which in itself possesses length. Weight can be measured only by a standard, defined and recognized, which in itself possesses weight. So, also value can be measured only by that which in itself possesses a definite and known value. The precious metals, coined and stamped, form the money of the world, because when thrown into the melting-pot and cast into bars they will sell in the market as metal for the same amount that they will pass for in the market as coined money. The coining and stamping are but a certificate by the government of the quantity and fineness of the metal stamped. The coining certifies to the value, but neither creates it nor adds to it."

—*From speech in the House of Rep., June 7, 1870, on 'Currency and the Banks.'*

### THE HOME, THE SCHOOL AND THE CHURCH

"There are three forces that must be brought to bear in the settlement of this agricultural problem—the home, the school and the church—and they are our trinity of saving influences. Among the American products which I saw at the great Paris Exposition in 1867, none so stirred my pride as an American as the farmer's home and the schoolhouse, which some thoughtful citizen of the U. S. had erected on the Exposition grounds. To the European laborer we were able to say: 'Go to America, and we will give you 160 acres of land. You can build on it such a house as this for \$800, and there will be erected near it, at the public expense, such a school house as that, where your children may be educated without cost to you, except in the taxes you pay.' That spectacle preached a louder sermon than the guns of Gravelotte or Sedan. Make the farmer's home the abode of industry and thrift, such as farm labor can make it; of intelligence and culture, such as our schools and public press can make it; and of purity and truth, such as a broad and unsectarian religion can make it; and you will have solved the questions that I have raised.



"And now a word to the young men who may hear me. Get intelligence, culture, conscience; of intelligence and culture; and then get ground to stand on, ground of your own, and hire out to yourself. Be your own master and pay yourself the wages you earn, and put the profits of your labor into your own pocket. Do not forever be commanded. Command something, if it be only a horse and dray. Be assured that in your own brain and arm lie your fortune and fame. Look to yourself for resources, and whatever you do, let it be only in the last extremity that you go to Washington after a clerkship."

—*From an Address on 'American Agriculture,' at Northern Ohio Fair, Cleveland, O., Oct. 12, 1870.*

### JAMES A GARFIELD

POVERTY. "Poverty is uncomfortable, as I myself can testify; but nine times out of ten the best thing that can happen to a young man is to be tossed overboard and compelled to sink or swim for himself."

### GARFIELD

"Ideas control the world."

"He who would understand the real spirit of literature should not select authors of any one period alone, but rather go to the fountain head, and trace the little rill as it courses along down the ages, broadening and deepening into the great ocean of thought which the men of the present are exploring."

"I mean to make myself a man, and if I succeed in that, I shall succeed in everything else."

"The sanctity of marriage and the family relation make the cornerstone of our American society and civilization."

"Real political issues cannot be manufactured by the leaders of parties and cannot be evaded by them. They declare themselves and come out of the depths of that deep which we call public opinion."

### ABRAHAM LINCOLN

"A character so unique that he stands alone, without a model in history or a parallel among men. Born to an inheritance of extremest poverty; surrounded by the rude forces of the wilderness; wholly unaided by parents; only one year in any school, never for a day master of his own time until he reached his majority; making his way to the profession of the law by the hardest and roughest road; yet by force of unconquerable will and persistent patient work he attained a foremost place in his profession."

—*From Address on 'Lincoln and Emancipation,' H. R., Washington, D. C., Feb. 12, 1878.*



## AGUSTUS H. GARLAND (1832-1899), Arkansas

### GARLAND'S ADVICE TO YOUNG LAWYERS

"A young lawyer should continue his professional studies with as much care and unremitting attention as when he was a student proper; making and preserving notes of his readings; attending, when possible, proceedings of an important character in the courts. His reading outside of the law should be mainly in aid of it; adhering to the law for itself, and not as an object secondary and auxiliary to something else; and making his client's cause his own, without reservation, and rendering his first duty to him. Punctuality to the moment in all engagements should be observed: it is an essential to any great success in the law. A kind respect and regard should be studiously cultivated toward his brothers in the profession, the officers of the courts before which he seeks to appear, as well as the judges of those courts. An even temper should be preserved in his bearing before the courts and in no case should he endeavor to argue a question after the court has decided it; and in all instances, short, close and terse arguments should be made, and this done, submit the matter to the court without further talk."

He was elected to the U. S. Senate, in 1867, and was not allowed to take his seat, under the "Test Oath Act." He brought suit against the constitutionality of the act, retaining as counsel, Reverdy Johnson and Matt H. Carpenter; but his own argument in this case, *ex parte Garland*, 4 Wall., 333, made him famous. He subsequently represented the State in the U. S. Senate for two terms; elected governor of Ark., in '74; Attorney-General in Cleveland's Cabinet, '87, holding the office four years.

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### WEBSTER INDUCED LEMUEL SHAW TO BECOME JUDGE OF THE SUPREME COURT OF MASSACHUSETTS

"I approached him upon the subject," said Webster. "He was almost offended at the suggestion." "Do you suppose," said he, "that I am going, at my time of life, to take an office that has so much responsibility attached to it for the paltry sum of \$3,000 a year?" "You have some property (Shaw's practice then amounted to \$20,000 a year), and can afford to take it," Webster replied. "I shall not take it under any circumstances," was his answer. "I used every argument I could think of. I plied him in every possible way, and had interview after interview with him. He smoked and smoked, and as I entreated and begged and expostulated, the smoke would come thicker and faster. Sometimes he would make a cloud of smoke so thick that I could not see him. I guess he smoked a thousand cigars while he was settling the point. He declared by all that was sacred he would resist the tempter. I appealed to his patriotism. I said he was a young man, and should take it for that reason. A long judicial life was the only useful one to the State. His decisions would give stability to the government, and I made him believe it was his duty, as I think it was under the circumstances."

—*From F. H. Chase's 'Life of Shaw,' 136.*

And Webster always claimed great credit as being the cause of his taking it.—*Author.*



## SIR VICARY GIBBS, England

### AGE AND IMPOTENCY

"Age may not be proof of impotency, but it is evidence of it. The probability of the Earl's begetting a child at eighty is very slight, and it is not increased by the appearance of another child two years later. Instances have been adduced of these extraordinary births; but none have been cited in which a man of eighty-two, having begotten a son, had concealed the birth of such son. Would he not seek publication rather than concealment? Besides, at the birth of children in families of distinction, it is generally an object of much anxiety to have the event authenticated. Some registry is made of it. None has been found here after the most diligent search. If the register is lost, the date may always be supplied by the banquets and festivities which with it is contemporaneous. Why, the whole country would have resounded with the ringing of bells! You would have had processions of old men upon the anniversary of such a prodigy. It would have excited as much surprise as if a mule had been brought to bed! \* \* \* In no register, in no will, in no document, is there any notice of this wonderful production. And then, not content with one, the miracle must be multiplied. It was not enough that one child should be born to a man at eighty-two: he must have another when he was eighty-four. And Nature consummated her prodigality by lavishing on these children the strength and vigor which she usually denies to the offspring of imbecility."

—*Argument in the Banbury Peerage, Case reported in an Appendix to Le Marchant's Gardner's Peerage, 427, 428.*

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### RELIGION AND POLITICS

"You commit a grievous error in supposing that politics and religion are so mingled together that you cannot preach one without introducing the other. Christ and his apostles kept them perfectly separate. They announced the great facts of the gospel to each individual whom they addressed. When these were accepted, the believer was told to repent and be baptized for the remission of his sins, and afterward to regulate his own life by the rules of a pure and perfect morality. They expressed no preference for one form of government over another. They provoked no political revolutions, and they proposed no legal reforms. If they had done so, they would have flatly contradicted the declaration that Christ's kingdom was not of this world, and Christianity itself would have died out in half a century. But they accepted the relations which were created by human law, and exhorted their disciples to discharge faithfully which arose out of them. Though the laws which defined the authority of husbands, parents, masters and magistrates were as bad as human perversity could make them, yet the early Christians contented themselves with teaching moderation in the exercise of legal power, and uniformly inculcated the virtues of obedience and fidelity upon wives, children, slaves and subjects. They joined in no clamors for or against sin before the only tribunal which Christ ever erected on earth—that is to say, the conscience of the sinner himself. The vice of political preaching was wholly unknown to the primitive church."

—*Jeremiah S. Black, in Reply to Dr. Nevin, York, Pa., July 25, 1866.*



## JUDGE JOHN B. GIBSON (1780-1853), Pennsylvania

### EMINENT DOMAIN

"It is indispensable to safety and speed that the route of the railroad be as direct as the surface of the country will permit, but that could not be attained in a country if every hovel or house were privileged; and thus a quasi national work intended for posterity might be botched through respect for the sacredness of temporary erections. The course of a railroad might be insuperably obstructed by the obstinacy of a proprietor in the gorge of a mountain, or the pass be made, at least, difficult and dangerous. A mangled passenger inquiring the reason of a deflection, when the cause of it had disappeared might be told of our infinite respect for property at the expense of safety; but the information would neither ease his pain, nor set his leg."

—*Brocket v. Ohio R. R. Co.*, 14 Pa. State, 244-5, Judge John B. Gibson.

### INSANITY

"Insanity is *mental* or *moral*; the latter being sometimes called homicidal mania, and properly so. \* \* \* It has been announced by learned doctors, that if a man has the least taint of insanity entering into his mental structure, it discharges him of all responsibility to the laws. To this monstrous error may be traced both the fecundity in homicides, which has dishonored this country, and the immunity that has attended them. The law is, that whether the insanity be general or partial, the degree of it must be so great as to have controlled the will of the subject, and to have taken from him the freedom of moral action. But there is a moral or homicidal insanity, consisting of an irresistible inclination to kill, or to commit some other particular offense. There may be an unseen ligament pressing on the mind, drawing it to consequences which it sees, but cannot avoid, and placing it under a coercion, which, while its results are clearly perceived, is incapable of resistance. The doctrine which acknowledges this mania is dangerous in its relations, and can be recognized only in the clearest cases. It ought to be shown to have been habitual, or at least to have evinced itself in more than a single instance. It is seldom directed against a particular individual; but that it may be so is proved by the case of the young woman who was deluded by an irresistible impulse to destroy her child. The frequency of this constitutional malady is fortunately small, and it is better to confine it within the strictest limits. If juries were to allow it as a general motive, operating in cases of this character, its recognition would destroy social order as well as personal safety. To establish it as a justification in any particular case, it is necessary to show, by clear proofs, its contemporaneous existence evinced by present circumstances, or the existence of an habitual tendency developed in previous cases, becoming in itself a second nature."—*In Commonwealth v. Mosler*, Pa., Rep. 264.

### THE FUNCTIONS OF A REPUBLICAN GOVERNMENT

"In a monarchy, the exemption of the sovereign from the operation of statutes in which he is not named, is founded in prerogative and hence it is supposed, that no such exemption can be claimed for a sovereign constituted of the people in their collective capacity. It is certain, that so much of the prerogative as appertained to the king by virtue of his dignity, is excluded by the nature of our government, which possesses none



of the attributes of royalty; but so much of it as belonged to him in the capacity of *parens patriae*, or universal trustee, enters as such into our political compact as it does into the principles of the British constitution. Why should it not do so peculiarly where the maximum *salus populi* is the predominant principle of a government to whose operations and well-being the prerogative is as essential as to those of a monarchy? The necessity of it, in regard to statutes of limitation, is peculiarly apparent. The business of every government is necessarily done by agents, chosen in a republic, by the people, it is true, but still no more than agents, and chosen certainly with no greater attention to the qualification of vigilance than are the agents of an individual. \* \* \* There is a perpetual tendency towards relaxation, where exertion is not invigorated by the stimulus of private gain; and this is the greater where the functions of the officer are to be performed, not under the supervision of an employer immediately concerned, but before the eyes of those who have no other interest in the business than the remote stake which they have in the public prosperity. To some extent, therefore, and in proportion to the want there happens to be of systematic accountability in the respective departments, remissness of its ministers will be found in every government; and it is a principle, not only of great practical value, but of the first necessity, that the legislature shall not be taken to have postponed a public right to that of an individual, unless such an intent be manifested by explicit terms, or at least by necessary and irresistible implication."—*In Commonwealth v. Baldwin*, 1 *Watt's Rep.* 54.

### TAKES 13 FOR VERDICT

"Gentlemen of the Jury, this verdict will be set aside for it takes twelve men and one more to rob a man of his land in Pennsylvania."

### A NEGOTIABLE INSTRUMENT

"A negotiable bill or note is a courier without luggage."  
—*In Overton v. Tayler*, 3 *Barr*, 346.

### PRECEDENTS

"Precedents are the highest evidence of the law, and are to be followed implicitly where they do not produce actual injustice or some intolerable mischief."—*Sauerman v. Weckerly*, 17 *Ser. and Rawle's Rep.*, 116.

### PRESUMPTIONS

"Not only convenience but necessity calls for a definite rule to produce certainty of result in the determination of facts which must be passed upon without proof; and such can be obtained only from the doctrine of presumption, which, however arbitrary, is indispensable, and, when founded in the ordinary course of events, productive of results which usually accord with the truth."—*John B. Gibson*, in *Burr v. Sim*, 4 *Wharton's Rep.*, 150.



## SAMUEL T. GLOVER (1813-1884). Missouri

### WAR VS. SLAVERY

"If war comes he shakes as with a giant's tread the pillars and foundations of the State. He buffets rudely our social and civil relations and rights; he passes by our homes and they are filled with mourning; he passes over our fields and they are blasted and blackened by his fiery bolts. At length, victory conquers or exhaustion mitigates his miseries. At length the frightful spectre departs and beautiful and gentle peace resumes her sway. The mayflower expands her fair coronal above the bleak skeleton; and from fields ensanguined with heroic blood the rank harvest springs forth to bless the land with plenty."

Born in Kentucky, and practiced there three years; moved to St. Louis in '49, where he practiced till death.

Says James I. Blair of the St. Louis bar: "For sheer power of intellect he stood among the first order of men; his powers resulted from a combination of genius with labor; he was equal to any emergency; and whatever he did would be adapted best to the necessities of the time and place."

### LEGALIZED GRAVE DESPOILERS

"The Missouri Convention have outraged the sense of universal humanity. In the insult which they have offered to the dead and the desecration of graves and tombs they have stricken a blow at every living human bosom. They have ordered the assessment and sale for taxes of the graves of their people. They are the first legislative hyenas on record. Hitherto, whoever despoiled a grave or tomb was a public criminal, subject to arrest and disgraceful punishment. A Convention legalized this odious crime. The new Constitution directs its efforts substantially to remove the enclosures around these solemn spots, tear down the monuments and divert the grounds from a sacred to a common use."

### GENERAL FRANKLIN PIERCE

"The Baltimore Convention may make Gen. Pierce our President, but Heaven has put it out of their power to make him great."

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### JOHN C. CALHOUN

"Calhoun has left better titles to remembrance than any which mere office can bestow. There was an unsullied purity in his private life; there was an inflexible integrity in his public conduct, there was an indescribable fascination in his familiar conversation; there was a condensed energy in his formal discourse; there was a quickness of perception, a vigor of deduction, a directness and a devotedness of purpose, in all that he said or wrote, or did; there was a Roman dignity in his whole Senatorial deportment; which together, made up a character, which cannot fail to be contemplated and admired to the latest posterity."

—*Robert Charles Winthrop on the death of John C. Calhoun, delivered in House of Representatives, Washington, D. C., April 1, 1850.*



THOS. P. GORE (1870- ), Oklahoma

### WILSON-HARVEY CONTROVERSY

"This whole Wilson-Harvey-Watterson incident is a bubble, not a billow. It is not surprising, however, that the opponents of Wilson and the friends of the other candidates should mistake the one for the other. It seems that the head and heart of the governor's (Wilson's) offending is that he has told the truth.

"No honest man can accept an office, least and last of all the presidency, with a lien upon his conscience or his conduct. Continuous support implies and imposes some obligation upon him who consents to accept it or who acquiesces in its continuance.

"No one has plenary power to select either his friends or his opponents in politics. To decline tendered aid and alliance is a most difficult and delicate task. Few men have the courage and the candor to do this when battle is joined. But in the light of higher ethics and politics it is better to decline support in advance, no matter what the sacrifice, than to renounce the obligation after the service is rendered, and the benefit enjoyed. To do that in the face of danger is an act of moral and political heroism of which few men are capable. Peradventure, the governor may have learned, by experience, that there are men who would undertake to capitalize gratitude and to commercialize influence. He may have thought it just and timely to foreclose the possibility of such an attempt hereafter.

"The critics of Governor Wilson should tell the public frankly whether their candidates would assume such an obligation as the governor declined, and if so, whether their candidates would disregard or would discharge such obligation. The American people have a right to know the text and terms of all mortgages and deeds of trust, either expressed or implied, under which a candidate for the presidency may labor, and they have an equal right to know the names of all the mortgagees and beneficiaries of the trust. I would rather see Governor Wilson defeated with his heart an open book 'that all who run may read' than to see him triumphant with a skeleton in his political closet which has been concealed from the eyes of the confiding public."

—*Thomas P. Gore of Oklahoma, concerning Woodrow Wilson's letter refusing the support of Henry Watterson and George Harvey, in 1912.*

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### ZACHARY TAYLOR

"I hazard nothing, sir, in saying that the roll of our Chief Magistrates, since 1789, illustrious as it is, presents the name of no man who has enjoyed a higher reputation with his contemporaries or who will enjoy a higher reputation with posterity than Zachary Taylor, for some of the best and noblest qualities which adorn our nature. His indomitable courage, his unimpeachable honesty, his Spartan simplicity and sagacity, his frankness, kindness, moderation and magnanimity, his fidelity to his friends, his generosity and humanity to his enemies, the purity of his private life, the patriotism of his public principles, will never cease to be cherished in the grateful remembrance of all just men and all true hearted Americans. As a Soldier and a General, his fame is associated with some of the proudest and most thrilling scenes of our military history. He may be literally said to have conquered every enemy he has met, save only that last enemy to which we must all in turn surrender."

—*Robt. C. Winthrop on the Death of Pres. Taylor, in H. of R., July 10, 1856.*



## HENRY WOODHULL GREEN (1804-1876), New Jersey

### A WILL—NOT DEPENDENT UPON THE VIRTUES OR VICES OF TESTATOR

"I need not say to an intelligent and reflecting jury, that the validity of this will can in no wise depend upon the virtues or vices of the testator. If this will be invalid, no virtue of the testator can sustain it, if valid, no vices of the testator can impair it. Much less can the validity of this will depend upon the consistency of its provisions with our ideas of fairness or propriety or even with the principles of justice and humanity; such a test of its validity would be certainly subversive of that absolute dominion which the law gives to every man over his own property. The question for your decision is not, is this a fair will, a just will, an equitable will, the will of a right thinking man and a kind hearted father, but is it Thomas Gibbons' will? If it is, your verdict should be for the defendant. Nor need I say to you, that this is not the place nor the occasion for the indulgence of our sympathy with misfortune, or our indignation against vice, much less are you here to rebuke sin. We are here in the discharge of a high and a sacred duty, which is to be performed with a single eye to the law and the testimony, irrespective of our feelings and our sympathies."

—*In charge to jury in Trumbull v. Gibbons, 2 Zabriskie, 117.*

Thomas Gibbons' will gave substantially all his property to his son, William, on condition, expressed in the strongest terms, that no part of it should ever go directly or indirectly to his son-in-law, John M. Trumbull, or any of his descendants to the remotest generation. It was insisted that the will was immoral and void for injustice and that it was the result of undue influence and the work of a perverted and insane mind. The case was tried in the Essex Circuit at the April term, 1849.

Judge Green was appointed Chief Justice of the Supreme Court of New Jersey, in January, 1847, which he held for 14 years; in 1860, he was appointed Chancellor, and held that position for 6 years.

Cortlandt Parker said of him, in 1874: "Those who did not know Henry W. Green as a Circuit Judge missed seeing an eminent illustration of judicial majesty. His great ability was certainly never excelled in N. J., and even less conspicuous than his stern, yet gracious manner in exercising his high office. He sat patient, untiring, admitting evidence with great liberality, and hearing and adjudicating all points with rare impartiality through the course of the trial. But when he came to charge the jury, he was so sweeping in supporting the side he thought right that counsel on both sides were half ashamed; the successful advocate, because his own effort appeared by comparison, so worthless, the unsuccessful one, because his seemed weak and needless. His was that rare achievement, a great Judge."

### A MANDAMUS

"The distinction is clearly drawn between the President himself, and the head of a department acting in a matter, which, in the opinion of the court, has passed beyond the control of the President, which he had no right to forbid, and which, therefore, it was to be presumed he had not forbidden. The case affords no warrant for the present application. And again, 'It is obvious that the exercise of the power now invoked will have a direct and immediate tendency to bring the executive and judicial departments of the government into conflict. It cannot alter the principle, that in the present case the Governor assents to the applica-



tion. We have Mr. Jefferson's authority for saying, that if the Supreme Court had granted a mandamus in the case of *Marbury v. Madison*, he should have regarded it as trenching on his appropriate sphere of duty; that he had instructed Mr. Madison not to deliver the commission and that he was prepared, as President of the U. S., to maintain his own construction of the constitution with all the powers of the government, against any control that might be attempted by the judiciary, in effecting what he regarded as the rightful powers of the executive and senate within their peculiar departments."

—*The State v. The Governor*, 1 *Dutcher's Reports*, 331.

The question was whether a mandamus could be issued to the Governor to compel him to issue a commission to the applicant as surrogate, contrary to the return of the board of county canvassers, when it appeared that the return had been made upon illegal evidence and was untrue. The Chief Justice held that the statute required the Governor to issue a commission upon the return of the board of canvassers and that the court could not instruct him to disregard the plain requirements of the statute that the mandamus must be denied "upon the broad ground that this court has not power to award a mandamus either to compel the execution of any duty enjoined on the Executive by the constitution, or to direct the manner of its performance."

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### THE FLAG—THE OLD FLAG

"Mr. President and Gentlemen:—The enthusiastic response which the sentiment just read (John A. Dix's order—'If any man attempts to haul down the flag, shoot him on the spot.') has received, is but the emanation of a principle in our nature as old as human society. In every age through which mankind has passed, organized communities have had appropriate emblems for the assertion of their authority at home and their rights abroad. From the eagles, under which the Roman Empire was extended over the known portions of the globe, the Crescents of the Saracenic race and the banners and oriflammes of the Middle Ages, down to the national flags and standards of our own times, a peculiar veneration has consecrated these symbols of sovereignty. Victories, social progress, the march of the nations to prosperity and power, have become identified with them. Insult to them from abroad has been resented by war. Treachery to them at home has been visited with the penalties of treason. They have been hallowed by lofty and ennobling associations; but none of them by higher or more endearing recollections than the flag which hangs over us today—the same flag under which our fathers battled for freedom and independence. It was adopted by the old Congress while the new-born Republic was struggling into life. Our armies first went forth to combat under it when Washington was their commander-in-chief. In the hour of victory we have given it to the winds as the expression of our thankfulness and joy. In the days of our calamity we have turned to it for support, as the people of God turned in the darkness of the night to the Pillar of Fire, which was conducting them through the perils of the wilderness. Holy associations like these should have made it sacred. But it has been more than once torn down and trampled under foot by traitors. When men have made up their minds to treason, the highest of all crimes, there is no baseness so low that they will not descend to it.

—*John A. Dix*, at 58th Annual Dinner of the New England Society, N. Y. City, Dec. 22, 1863.



## GALUSHA A. GROW (1822-1901), Pennsylvania

### MAN'S RIGHT TO THE SOIL

“The fundamental rights of man may be summed up in two words—Life and Happiness. The first is the gift of the Creator, and may be bestowed at his pleasure; but it is not consistent with his character for benevolence, that it should be bestowed for any other purpose than to be enjoyed, and that we call happiness. Therefore, whatever nature has provided for preserving the one or promoting the other belongs alike to the whole race. And as the means for sustaining life are derived almost entirely from the soil, every person has a right to so much of the earth's surface as is necessary for his support. To whatever unoccupied portion of it, therefore, he shall apply his labor for that purpose, from that time forth it becomes appropriated to his own exclusive use; and whatever improvements he may make by his industry become his property, and subject to his disposal.

“The only true foundation of any right to property is man's labor. That is property, and that alone which labor of man has made such. What right, then, can the Government have in the soil of a wild and uncultivated wilderness as a source of revenue, to which not a day nor an hour's labor has been applied, to make it more productive, and answer the end for which it was created, the support and happiness of the race?

“It is said of the great expounder of the common law in his commentaries, that ‘there is no foundation in nature or natural law, why a set of words upon parchment should convey the domination of the land.’ The use and occupancy alone gives to man, in the language of the commentaries, ‘an exclusive right to retain, in a permanent manner, that specific land which before belonged generally to everybody, but particularly to nobody.’ \* \* \*

“It may be said, truly, such ‘would be man's right to the soil in a state of nature; but when he entered into society, he gave up part of his natural rights, in order to enjoy the advantages of an organized community. This is a doctrine, I am aware, of the books and treatises on society and government; but it is a doctrine of despotism, and belongs not to enlightened statesmen in a liberal age. It is the excuse of the despot in encroaching upon the rights of the subject. He admits the encroachment, but claims that the citizen gave up part of his natural rights when he entered into society; and who is to judge what ones he relinquished but the ruling power? It was not necessary that any of man's natural rights should be yielded to the State in the formation of society. He yielded no right, but the right to do wrong, and that he never had by nature. All that he yielded in entering into organized society was a portion of his unrestrained liberty, which was, that he would submit his conduct to the control of no living being, to the tribunals to be established by the State, and with a tacit consent that society, or the Government, might regulate the mode and manner of the exercise of his rights. Why should he consent to be deprived of them? It is upon this ground that we justify resistance to tyrants. Whenever the ruling power so far encroaches upon the natural rights of men that an appeal to arms becomes preferable to submission, they appeal from human to divine laws, and plead the natural rights of man in their justification. That government, and that alone, is just which enforces and defends all of man's natural rights and protects him against wrongs of his fellow men. But it may be said, although such might be the natural rights of men, yet the Government has a right to these lands, and may use them



as a source of revenue, under the doctrine of eminent domain."

—*The above speech was made in the House of Representatives, 1852.*

Admitted to Bar, 1847; member of Congress, '51-'63, first as Free Soil Democrat and latterly as a Republican, being Speaker of the House after '61. As Prest. of the International and Great Northern R. R., he lived in Texas for some time, but returned to Pa. in '76.

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### OUR PREJUDICES

"We easily believe what we wish to be true. We are prone to be satisfied with light proof, or any fallacy, or feeling. When we suffer ourselves to be thus tempted, we act as tyrants, not as judges. In the midst of our virtuous indignation against crime, we first assume it has been committed, and then seek for arguments to confirm not our judgments, but our prejudice. 'Trifles light as air' then become 'strong as proofs of holy writ!' Circumstances which to an unprejudiced mind are just as compatable with innocence as guilt, which at best could only raise a suspicion, are set down as conclusive evidence of crime. Those who sit in judgment over man's rights, whether as courts or juries should beware of this natural weakness to which we are almost all of us subject."

—*Judge Robt. C. Grier, from Charge to Jury, of Pa.*

Born 1794; was associate Justice of the U. S. Supreme Court, 26 years (1844-1870). Occupies a front rank among American Jurists. In *Turner v. Hand*, 3 Wallace, Jr. 112.—*The Author.*

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### NOT GUILTY OF LARCENY

"Prisoner, a few minutes ago you said you were a thief. Now the jury say you are a liar. Consequently you are discharged."

—*Judge Henry Hawkins, (Baron Brampton) of England, to a prisoner, who had pleaded 'guilty' to larceny, and then withdrew his plea, and was tried and found 'not guilty.'*

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### CENSURE AND CRITICISM

"Censure and Criticism never hurt anybody. If false, they can't hurt you unless you are wanting in manly character; and if true they show a man his weak points and forewarn him against failure and trouble."

—*W. E. Gladstone.*

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### HOME

"Home is a little place, and there a good woman can make a Heaven, rear a throne, and rule a goddess."—*W. E. Gladstone.*



## JOHN R. GRYMES (1786-1854), Louisiana

### CHARACTERISTICS

"Grymes was a Virginian and a close connection of John Randolph, of Roanoke, whose name he bore; but of this he never boasted, nor did anyone hear him claim alliance of blood with Pocahontas. Mr. Madison appointed him District Attorney of the U. S., for the district of Louisiana, when a very young man. His appointment introduced him to the Bar and the practice immediately. He was one of those extraordinary creations, who leap into manhood without the probation of youth; at twenty-two he was eminent and in full practice, ranking with the leading members of the bar. Truly Grymes was born great, for no one can remember when he was not great. Never in company, in social life, with a private friend, at the bar, or anywhere, was he even apparently simple like other men; in private, with his best friend, he spoke, he looked, and he was, the great man. He was great in his frivolties, great in his burlesques; great in his humor, great in common conversation; the great lawyer, the great orator, the great spendthrift; in nothing was he little. His language was ornate, his style was terse and beautiful; in conversation he was valuable and transcendently entertaining; knew everybody and everything; never seemed to read, and yet was always prepared in his cases, and seemed to be a lawyer by intuition. He was rarely in his office, but always on the street, and always dressed in the extreme of fashion; lived nowhere, boarded nowhere, slept nowhere, and ate everywhere. He dined at a restaurant, and scarcely ever at the same place twice in succession; would search for hours to find a genial friend to dine with him, and then, if he was in the mood, there was a feast of the body, and a flow of the soul; went to every ball, danced with everybody, visited the ladies; was learned or frivolous, as suited the ladies' capacities or attainments; appeared fond of their society, and always spoke of them with ridicule or contempt; married and separated from his wife, no one knew for what cause, yet still claimed and supported her. She was the widow of Governor Claiborne, and a magnificent woman; she was a Spaniard by blood, aristocratic in her feelings, eccentric, and, intellectually, a fit companion for Grymes. She was to Claiborne an admirable wife but there was little congeniality between her and Grymes. Grymes knew that it was not possible for any woman to tolerate him as a husband, and was contented to live apart from his wife. They were never divorced, but lived, she in New York, or at her villa on Staten Island; Grymes in New Orleans. He never complained of her; always spoke kindly, and sometimes affectionately of her; denied the separation, and annually visited her. Their relations were *perfectly* amicable, but they could not live together. Grymes could have lived with no woman. In all things he was *sui generis*; with no one like him in any one thing, and he was never the same being two consecutive days."

—W. H. Spark's '*Memoirs of Fifty Years*,' 432.

### ALWAYS IN DEBT

"During the existence of the law which imprisoned for debt, Grymes was constantly in the sheriff's hands, but always settling by the most ingenious devices the claim at the jail-door. On one occasion, the sheriff notified him that there was a *ca. sa.* in his hands, and that he did not want to arrest him. The sum was large, some \$2,000; Grymes had not a dollar. He paused a moment, then said, 'Come to-morrow to me. I have a case of Milliaddon's for trial tomorrow; he is greatly interested in it. When it is called, I will give you the wink, then arrest me.' In obedience to



directions, the sheriff came, the case was called, and Grymes arrested, Milliaddon was in court, his hopes were in Grymes, and when he was informed that Grymes was in custody of the sheriff, he groaned aloud:

"‘Oh! Mr. Grymes, vat am I to do?’

"‘Why, you must employ other counsel,’ said Grymes

"‘Mon dieu! but I have pay you for attend this case, and I want you. You know about it, and it must be try now.’

"‘Yes,’ continued the imperturbable Grymes, ‘you have paid me, I know, and it would endanger the case to trust it with other counsel, but it is your only hope. I have no money, and here is a *ca. sa.*, and I am on my way to jail.’

"‘Oh! mon dieu! mon dieu! vat is de amount of de *ca. sa.*?’

"‘Two thousand dollars,’ said the sheriff.

"‘Two thousand dollars!’ repeated Milliaddon.

"‘Goddell v. Milliaddon,’ said the Judge, ‘Preston for plaintiff: Grymes, for defendant, what do you do with the case, gentlemen?’

"‘We are ready,’ said Preston.

"‘And you, Mr. Grymes?’ asked the officer.

"‘Vill you take my check for de *ca. sa.*, Mr. Sheriff?’

"‘Certainly, sir,’ replied the officer.

"‘Say we is ready, too, Mr. Grymes, all my witnesses be here.’

"‘I believe we are ready, your Honor,’ answered Grymes.

"Milliaddon was writing his check. ‘Enter satisfaction on the *ca. sa.*!’ said Grymes. The sheriff did so, as Milliaddon handed him the check. Grymes now turned his attention to the case as coolly as though nothing had occurred. That was the last Milliaddon ever heard of his \$2,000.”

—*W. H. Spark's 'Memoirs of Fifty Years,' 434-5.*

### REGRETTED EARLY IMPROVIDENCE

"During Grymes old age, he said to Mr. Sparks: ‘Now, my friend I feel how miserably foolish I have been all my life. I have thrown away a fortune because I despised it. It was the groveling a pursuit, too mean a vocation, to make and to hoard money. In my soul I despised it, and now you see it is revenged; for without it, I have learned there is no gratification for ambition, no independence of a sneering, envious world. A bankrupt is a felon, though his mind, his virtues, and his attainments may be those of a god. He is a useless waif upon the world, for all he has, or all he may be, is, to himself and the world, unavailable without money. I have discarded all my ambitious aspirations long since, and tried to reconcile myself to the fact that my life was within my reach, when I have no means to grasp it (Sparks was with him to tell him that he could be elected United States Senator), and now that I am miserable, to show me what I might have been. No, my friend, I must go on with the drudgery of the law, to earn my bread, and thus eke out a miserable future. I am gratified to you and my friends, who have delegated you to this mission. Say so to them, if you please. I must go to Court. The horse of the bark-mill must go to his daily circle. Good morning.’ ”

—*Spark's Memoirs, etc., 437.*

### \$100,000 FEE

Grymes, as the attorney for the City of New Orleans, succeeded before the Supreme Court of the United States in making good the batture property in the city. What is termed the batture in Louisiana is the land made by accretion, or deposits of the Mississippi. One strange feature of this great river is that it never gets any wider. It is continually wearing and carving on one side or the other, and making a corresponding deposit on the other bank. Opposite, a portion of the City of New Orleans this deposit has been going on for many years, while the opposite bank



has been wearing away. There are living citizens, who saw in youth, the river occupying what is now covered by many streets and by many blocks of buildings, and is one of the most valuable portions of the city. In truth, was a century ago, entire river, is now one-fourth of the city, and this deposit goes on annually without any decrease in its ratio. By agreement of all parties, the batture was surveyed into squares and lots, and sold at public auction, and the money deposited in the Bank of Louisiana, to the credit of the Supreme Court of the United States, to abide the decision of that tribunal as to the rightful ownership. The decision gave it to the city. Grymes, as attorney for the city, by order of the Court, received a check for the money. The Bank paid the check, and Grymes appropriated \$100,000 of it as a fee for his services, and then deposited the balance to the credit of the Mayor and Council of the City. This was a large fee, but was not really what he was entitled to, under the custom of chancery, for collecting money. He had agreed to pay Daniel Webster, for assistance received; but Mr. Webster, some years after, informed me that he had never received a cent, and I am sure that he never did, after that."—*Spark's 'Memoirs of Fifty Years,'* 438-9.

### SOMETHING OF HIS CAREER

Grymes was born in Orange Co., Va., in 1786, son of John Randolph Grymes (1746-1820). He was admitted in 1808, removed to Louisiana, where he attained eminence as a lawyer; served in the battle of New Orleans as aid to Gen. Jackson, where he won great commendation for bravery. He was Gen. Jackson's counsel in the U. S. Bank Case, and was the opposing counsel to Daniel Webster in the case of the City of New Orleans v. Myra Clark Gaines; was U. S. Dist. Atty, Atty-General of the State, and a member of the legislature; fought two duels, in one of which he was severely wounded; died at New Orleans, Dec. 4, 1854. He was engaged in almost every case of importance in the courts of New Orleans and the surrounding country.

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### YELVERTON'S DEFENCE OF GRATTAN

"The learned gentleman (Fitzgibbon, or Lord Clare) has stated what Grattan is. I will state what he is not. He is not styeed in his prejudices; he does not trample on the resuscitation of his country, or live, like a caterpillar, on the decline of her prosperity; he does not stickle for the letter of the Constitution with the affection of a prude and abandon its principles with the effrontery of a prostitute."



W. P. HACKNEY (1842- ), Kansas

## FAME

It was at a church banquet, where nearly 500 of what was otherwise an audience of far more than ordinary intelligence, comprising the cream, as it were, of one of the nearby suburbs of one of our great cities (Clev'd, O.), to which I was invited, under a solemn promise that if I would attend I would not be called upon to speak. I insisted that I was not a happy after-dinner talker, when I was unexpectedly called upon by the toast-master, after admitting his breach of faith to respond to the toast, "FAME."

It is needless to say I was dumbfounded; taken completely by surprise, upon a subject that had never engaged my attention for discussion. The audience, with few exceptions, was one of unfamiliar faces to me, and at first I flatly refused to speak; but such was the persistent demands of all, coupled with the insistence of my wife, that I reluctantly consented, altho what I should say, was only a matter of conjecture with myself. But something seemingly I must say, and rising I said:

"Mr. Toast-master, Ladies and Gentlemen: Only on the most solemn promise of your Toast-master that I would not be called upon was I induced to accept his and your pastor's invitation to be with you tonight. I think I know my limitations, and after-dinner speeches are not my forte, and I feel my incompetency to handle the subject given me, 1st: Because of want of preparation; 2nd: Because the discussion of that question never has been considered by me; and 3rd: Because I am neither an orator, nor the son of one, and this call has taken me entirely by surprise. And yet, it may be that I can say something to illuminate the subject, something that you can take home for consideration.

"To my mind, *Fame* is an iridescent dream; a chimera of the brain, indulged by man in a mad scramble for the plaudits of the 'pee-pul.' A political fantasia that causes the individual to waste his life, where there are no compensations awaiting for the worry and toil necessary to follow it. Something, when seemingly within one's grasp, *ignis fatuus* like is gone, and the victim having run his course, drops into decrepitude, a disgusted, dissatisfied and disappointed old man, the grave swallows him up, and he is forgotten in an hour.

"There is no subject that has taken fast hold upon, held such sway, and inspired so many crimes as that word has conjured in the minds of men. That was the power that influenced the wife of Macbeth, and made of her the bloody monster, whose sneers drove her cowardly husband to murder Duncan. That was the influence that assassinated Caesar, divided the Triumvirate, covered the planes of Pharsalia with soldiers dead, and enabled Augustus to assume the imperial purple. And so on, I might go on with like illustrations of the emptiness of that word FAME. How many of this vast aggregation can tell me who Lyman Trumbull was? Please hold up your hands. (Just two responded.) Each when catechised by me, disclosed that he had in mind, Jonathan Trumbull, of Connecticut, of Revolutionary fame, when I proceeded:

"No! No! friends, you are both mistaken. Lyman Trumbull was a distinguished lawyer, one of the Judges of the Supreme Court of Illinois, in 1854: a free soil Democrat, and then elected to the Senate of the U. S., from the State by a combination of that wing of the Democratic Party, made possible only by the withdrawal in his favor by Abraham Lincoln, the Whig candidate in that Legislature. From thence he served the people 18 years. He was chairman of the Judiciary Committee of that body; of the Committee for the Investigation of the Conduct of the Civil



War; of Reconstruction, and twice a candidate for the Presidency. For 18 years, and particularly the last 12, his name filled the daily press, and his fame was not confined to this continent. One of the purest and grandest men this or any other Nation ever produced. He voted against the impeachment of President Andrew Johnson, and thereby was driven into private life, where lingering, forgotten, unheralded and unsung, he passed away less than two months ago, at the advanced age of ninety-three.

"What a commentary on ambition and the love of FAME is his life! Dead less than two months! Yet, an intelligent audience, composed of hundreds in a neighboring city from where he died, can produce not one who can recall that such a man ever lived. And such is Fame.

"In conclusion:

" 'Mark Ambition's rise sublime  
Up to Fame's meridian heights,  
While pale-eyed Envy sees him climb,  
And sickens at the sight.'

" 'The boast of heraldry, the pomp of power  
And all that beauty, all that wealth e'er gave  
Await alike the inevitable hour,  
The paths of glory lead but to the grave.' "

#### IN DEFENSE OF THE BIBLE

"In defense of the Bible, Hosmer tells us that 'In several respects the Mosaic law is declared to have anticipated modern science by several thousand years,' and I here and now challenge the attention of my hearers and all others versed in Biblical lore to the literary excellencies; the incisive logic; the scientific knowledge; the trenchant philosophy; and the beauty, the poetry, the wisdom, and the eloquence found therein. Where can the learning displayed in the five books of Moses be duplicated; the pathos of the lamentations of Jeremiah be equaled; the poetry of Job surpassed; the wisdom of Solomon excelled; the Psalms of David paralleled; the teachings of Christ comparable; or the oratory and eloquence of Paul equaled? In all of which is found, all of the history, the learning, the literature, the science, the philosophy, and the eloquence now known to man, anticipated. Before all of which—astonishing, surprising, amazing, wonderful, marvelous, overwhelming and astounding—all other thinkers and writers are comparable only as a tallow dip candle is to the glories of a noon-day sunshine. Aye! Before which all other history, all other logic, all other wisdom, all other science, and all other philosophy is incomparable, and these facts ought to be sufficient alone to convince the minds of all that such utterances were not possible without 'an inspiration from on high.' "

—*From a Lecture delivered at Wichita, Kans., March 23, 1913, on "The Personality of the Almighty Father and the Divinity of His Son, Christ Jesus."*

Mr. Hackney, who is a very eloquent and influential lawyer in Southern Kansas, was born in Iowa, Dec. 24, 1842, and practiced 6 years at the Cleveland, O., Bar. Is now a resident of Winfield, Kans.



HERBERT S. HADLEY (1872- ), Missouri

### OPPORTUNITIES IN MISSOURI

"I realize many will be surprised to find Missouri classified as a Southern State. This is not strange, as Missouri is so diversified in her resources. She represents the South, East and West. She extends farther south of Mason and Dixon's line than Virginia and Kentucky; farther north than Kansas; farther west than Arkansas and farther east than Iowa.

"Many will be surprised to find it classified as an undeveloped state. For the six cities that transact the largest business in the United States, two, Kansas City and St. Louis, are located in Missouri. Missouri produces more lead and zinc than any state. The \$14,000,000 worth of these two minerals which the entire country produces, 12½ million dollars' worth come from Missouri. Her packing and stockyard business far exceeds Chicago, and her manufactured products surpass every state west of the Mississippi and many of the New England states.

"With an average yield of forty bushels per acre, Missouri in 1908 produced a corn crop worth 100 million dollars, exceeding in production per acre the corn crop of any state, and in amount all but three. The 27½ million bushels of wheat produced that year sold for a quarter of a million dollars more than the silver that was mined in the United States. Her poultry products exceeds the value of gold produced in the U. S. Her cotton yield is 50% greater than the average yield per acre in the United States. The fruit crop brings each year over \$10,000,000, one of the leading fruit producing states. In population and wealth, Missouri ranks fifth, although only fifteenth in area. Missouri has a larger area of undeveloped land than any state south of Mason and Dixon's line and east of the Mississippi. Of Missouri's 44 million acres, nearly one-half have never been touched by a plow. This undeveloped land varies from the plateaus in the Ozarks to the rich alluvial soil of the Southeast, from the best cotton and tobacco to the best fruit lands in the United States.

"A philosopher observed that the best for human habitation is that country farthest south where grass grows well. There is much philosophy in this declaration. The grass in the Ozark region makes that section the best for dairying and the raising of stock. The cheapness of the land places it within the reach of every homeseeker, at from \$3 to \$15 per acre. Missouri has thus more room for homebuilders and investors than any state south of Mason and Dixon's line and east of the Rockies; soil that will produce anything raised in the temperate zone and a climate favorable to the conditions of life."—*Collier's Weekly*, Jan., 1910.

Mr. Hadley was born at Olathe, Kans, 1872; graduated University of Kansas, 1892; in law at University of Chicago; began practice in 1894, at Kansas City, Mo.; was assistant city counselor of Kansas City 1898-1901; prosecuting attorney Jackson County one term; in 1904 elected attorney-general of Missouri on the Republican ticket; co-operated with Governor Folk in enforcement of the laws against combination in restraint of trade and in 1906 secured evidence from officers of the Standard Oil Co., in regard to its ownership to alleged rival companies doing business in contravention of the State Anti-trust law. In 1908 he was elected Governor of Missouri by 15,500 plurality on the Republican ticket.—*Author*.



## SIR MATTHEW HALE (1609-1676), England

### TRUSTS

“The parents of trusts were *fraud and fear*, and a court of conscience was the *nurse*.”

—*Attorney General v. Sands, Hardres, 491. Quoted in 1 Perry on Trusts, Sec. 3, note, 1655.*

### ORATORY

“If the judge or jury has a right understanding, oratory signifies nothing but a waste of time and lots of words.”

LORD MATTHEW HALE: No man of his time had a more complete mastery of the common law.

### DEBT

“Run not into debt, either for wares sold, or money borrowed; be content to want things that are not of absolute necessity, rather than to run up the score: such a man pays at the latter end a third part more than the principle comes to, and is in perpetual servitude to his creditors; lives uncomfortably; is necessitated to increase his debts to stop his creditor’s mouths and many times falls into desperate courses.”

### THE PASSIONS

“The passions are unruly cattle, and therefore you must keep them chained up, and under the government of religion, reason, and prudence. If you thus keep them under discipline they are useful servants; but if you let them loose, and give them head, they will be your masters, and unruly masters, and carry you like wild and unbridled horses, into a thousand mischiefs and inconveniences, besides the great disturbance, disorder, and discomposure they will occasion in your mind.”

### THE EFFECTS OF LYING

“Lying is a great sin against God, who gave us a tongue to speak the truth and not falsehood. It is a great offense against humanity itself; for where there is no regard to truth, there can be no safe society between man and man. And it is an injury to the speaker; for, besides the disgrace which it brings upon him, it occasions so much baseness of mind that he can scarcely tell truth, or avoid lying, even when he has no color of necessity for it, and in time he comes to such a pass that as other people cannot believe he speaks the truth, so he himself scarcely knows when he tells a falsehood. So you must be careful not to lie, as you must avoid coming near it. You must not equivocate, nor speak anything positively for which you have no authority but report, or conjecture or opinion.”

### BEWARE OF A BRAGGART AND FLATTERER

“If a man whose integrity you do not very well know makes you great and extraordinary professions, do not give much credit to him. Probably you will find that he aims at something besides kindness to you and that when he has served his turn, or been disappointed, his regard for you



will cool. Beware also of him who flatters you and commends you to your face, or to one who, he thinks, will tell you of it; most probably he has either deceived and abused you, or means to do so. Remember the fable of the fox commending the singing of the crow, who had something in her mouth which the fox wanted. Be careful that you do not commend yourselves. It is a sign that your reputation is small and sinking, if your own tongue must praise you."

### PITYING A CRIMINAL

"When I find myself strongly inclined to pity a criminal, I am compelled to remember that there is likewise pity due the country and its people."

### TIME

"Time is the wisest thing under heaven. Time and long experience are much more ingenious, subtle and judicious than all the wisest and acutest wits coexisting in the world can be."

### HALE—DISGUISED AS A MILLER

"The younger of two brothers had endeavored to deprive the elder of an estate of 500 pounds a year, by suborning witnesses to declare that he died in a foreign land. Coming into court, in the guise of a miller, Sir Matthew Hale was chosen as the twelfth jurymen to sit in the case. As soon as the clerk of the court had sworn in the jurymen, a little dexterous fellow came into their room, and slipped ten gold pieces into the hands of eleven of the jury, and gave the miller five, while the judge was known to be bribed with a great sum. The judge summed up the evidence in favor of the younger brother, and the jurymen were about to retire to give their assent, when the supposed miller stood up and addressed the court with such energetic and manly eloquence as astonished the judge and all present. He unravelled the sophistry to the very bottom, proved the fact of bribery, evinced the elder brother's title to the estate, from the contradictory evidence of the witnesses, and gained a complete victory in favor of truth and justice."

—*The full story of which this is a brief epitome, is to be found in McGuffey's 5th Reader.*

### HALE'S NAME A SYNONYM FOR INTEGRITY AND SAGACITY

"Wherever the English language is spoken, or the English Common law adopted, the name of Chief Justice Hale is a synonym for whatever is sagacious in legal judgment or unpurchasable in judicial integrity."

—*Wm. G. Bryan, of N. Y. Bar, from Lecture on Cromwell.*

### HALE A FRIEND OF SELDEN

"Sir Matthew Hale had been the learned Selden's intimate friend, and one of his executors; and because the Hobbians, and other infidels, would have persuaded the world that Selden was of their mind, I desired him to tell me the truth therein. He assured me that Selden was an earnest professor of the Christian faith, and so angry an adversary of Hobbes that he hath related him out of the room."

—*Richard Baxter, 'Character of Sir Matthew Hale.'*

### CONSTITUTIONAL LAWYER

"As a lawyer, and especially as a constitutional lawyer, Hale has, perhaps, never been equaled."—*Roscoe's Lives, etc., 78.*



## COMPARED WITH SIR EDWARD COKE

"Comparing Hale with Coke, he transcended that luminary of the law in the accuracy and extent of his antiquarian knowledge, in his intimate acquaintance with the records, and the orderly arrangements of the vast stores of learning which he had acquired. The respect paid to his legal opinions even to his own day was such, that of his brothers, the latter struck with the force of reasoning displayed in Hale's arguments, have been known to retract the opinion they had expressed."

—*Roscoe's Lives, etc.* 78.

## HIS WRITINGS

Lord Hale, who was appointed by Oliver Cromwell, Chief Justice of England, wrote numerous works, as "History of the Pleas of the Crown," "History of the Common Law of England," and various Moral and Religious Works.

## ABUSE OF THE WRIT OF HABEAS CORPUS

"All laws made for the general welfare of a country as large as ours, and for the protection of rights so diversified, must necessarily encounter some local unpopularity. It was always so from the origin of the government. But in the earlier and better days of the Republic, this mode of opposing them was not thought of. In 1796 the excise duty on distilled spirits was believed in Western Pennsylvania to be not only oppressive but unconstitutional. But the men of that day threw themselves back on the moral right of revolution and opposed the obnoxious law with arms in their hands. They never dreamed of carrying on the 'Whisky War' by firing off *habeas corpus* at the Federal authorities. Two years afterward there was a strongly-marked division of sentiment on the constitutional validity of the Sedition Law. There was but one man in the country who thought of asking relief at the hands of a State judge. The precedent was not thought a fit one to be followed, and Mr. Sergeant's research alone has saved it from total oblivion. Callender and Lyon and Cooper served out their time, and paid their fines, or waited the advent of a new administration. At a later period when nullification arose in South Carolina, the people of that State assembled in convention, and abrogated the tariff act by a solemn ordinance. This, according to their theory, wiped it from the statute-book as completely as if it had been repealed by Congress. Then they authorized resistance to it, and judges might oppose it by *habeas corpus* and *homine replegiando* on the same principle that a private citizen could oppose it with pike and gun. We all remember the great debate in the Senate on this subject. Mr. Webster won his victory, so far as it was a triumph of logic and of law, by pressing this very point upon his adversary. 'How,' said he, 'will you release yourselves from the grasp of the Federal judiciary?' But the victory would have been on the other side, if General Hayne could have answered that the State judges had a right to take every case into their own keeping by means of the *habeas corpus*. He could not say so; he was too wise a man to believe it, and too honest to say what he did not know to be true. President Jackson, in his proclamation, used the same unanswerable argument. The truth is, that the exclusive authority of the Federal judges to decide all cases arising under the Federal laws was the lion in the path of nullification. It saved the country from dismemberment then, and no one knows the day nor the hour when it may be necessary to invoke it again for the same purpose. When it ceases to be maintained, the Union of the States will become a rope of sand."

—*Jeremiah S. Black, in argument before U. S. Supreme Court, in Ableman v. Booth, and the U. S. v. Booth, coming up from the State of Wisconsin, 'Essays and Speeches of J. S. Black,' 425-6.*



CHANCELLOR HALSBURY, HARDINGE STANLEY GIFFARD  
(1825- ), England

AN ADVOCATE SHOULD DEFEND A BAD CAUSE

"A thesis has been propounded on the other side more extravagant, and certainly more impossible of fulfillment; that is, that an advocate is bound to convince himself, by something like an original investigation, that his client is in the right, before he undertakes the duty of acting for him. I think such a contention ridiculous, impossible of performance, and calculated to lead to great injustice. If an advocate were to reject a story because it seemed improbable to him, he would be usurping the office of the judge, by which I mean the judicial function, whether that function is performed by a single man, or by the composite arrangement of judge and jury which finds favor with us. Very little experience of courts of justice would convince any one that improbable stories are very often true, notwithstanding their improbability."

—*Chancellor Halsbury (as quoted in the London Law Notes, for Oct., 1899).*

Lord High Chancellor of England. He was first appointed to this office in Lord Salisbury's short lived administration (1885-6), then in his second government (1895-1900), and in the reconstruction Ministry (Oct., 1900), and finally, in Mr. Balfour's first administration, (July, 1902). Perhaps the most interesting and powerful of his judgments was that given in the appeal to the House of Lords by the Free Church of Scotland against the United Free Church.—(1904.)

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BLACKSTONE

"He it was who first gave the law the air of science. He found it a skeleton, and he clothed it with life, color and complexion; he embraced the cold statue, and by his touch it grew into youth, and health, and beauty."—*Yelverton*.

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A FRIEND OF CURRAN

"Yelverton was the dearest friend of Curran. The latter was attorney for Judge Robert Johnson, prosecuted for libel for publishing a paper; published by Cobbett, against Lord Redesdale, on circumstances connected with Emmet's trial. In his speech Curran appealed to Lord Avonmore, who presided, in the name of their early friendship and the happy hours they had passed together. Quoting from Cowley, he said:

'We spent them not in toys, or lust, or wine;  
But search of deep philosophy,  
Wit, eloquence, and poesy—  
Arts which I loved; for they, my friend, were thine.' "

There had been a coolness between them, but Avonmore sent for Curran, when the court rose, threw himself into his arms, while his eyes were yet wet with tears and they were friends again.—*Author*.



## ALEXANDER HAMILTON (1757-1804), New York

### THE SACRED RIGHTS OF MANKIND

"The sacred rights of mankind are not to be rummaged for among old parchments or musty records; they are written as with a sunbeam, in the whole volume of human nature, by the hand of Divinity itself."

—*Alexander Hamilton.*

### PREAMBLE TO CONSTITUTION

"To form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense and promote the general welfare," was composed and drafted by Alexander Hamilton. He was called to account for its tautology, in the expression "to form a more perfect union," and when asked if perfection itself could bear the comparative word "more," he retorted by pleading Shakespeare for the necessity sometimes of double superlative, and quoting the line from Julius Caesar, "most unkindest cut of all."—*Alexander Hamilton.*

### LABOR IN THE LAW

"Men give me some credit for genius. All the genius I have lies first in this: when I have a subject in hand, I study it profoundly. Day and night it is before me. I explore it in all its bearings. My mind becomes pervaded with it. Then the effort which I make the people are pleased to call the fruit of genius. It is the fruit of labor and thought."

—*Alexander Hamilton.*

### THE POWER OF THE GOVERNMENT IS SOVEREIGN

"It is presumed to have been satisfactorily shown in the course of the preceding observations: (1) That the power of the government, as to the objects entrusted to its management, is, in its nature, sovereign. (2) That the right of erecting corporations is one inherent in, and inseparable from, the idea of sovereign power. (3) That the position, that the government of the United States can exercise no power but such as is delegated to it by its Constitution, does not militate against this principle. (4) That the word *necessary* in the general clause, can have no *restrictive* operation derogating from the force of this principle, indeed, that the degree in which a measure is or is not *necessary*, cannot be a *test* of *constitutional right*, but of *expediency* only. (5) That the power to erect corporations is not to be considered as an *independent* or *substantive* power, but as an *incidental* and *auxiliary* one, and was therefore more properly left to implication than expressly granted. (6) That the principle in question does not extend the power of that government beyond the prescribed limits, because it only affirms a power to *incorporate* for purposes *within the sphere* of the *specified powers*. And lastly that to exercise such a power in certain cases is unequivocally granted in the most *positive* and *comprehensive* terms. To all which it only remains to be added, that such a power has actually been exercised in two very eminent instances; namely, in the erection of two governments; one northwest of the River Ohio, and the other southwest—the last independent of any antecedent compact. And these result in a full and complete demonstration, that the Secretary of State and the Attorney General are mistaken when they deny generally to erect corporations."

—*Alexander Hamilton's reply to Jefferson and Randolph's objection to establish a National Bank. Washington adopted Hamilton's plan.*



## MAN—A REASONING ANIMAL

“Man is a reasoning, rather than a reasonable, animal.”

## WASHINGTON

“The voice of praise would in vain endeavor to exalt a name unrivalled in the lists of true glory.”

## THE USE OF GOVERNMENT

“Governments are instituted because the passions of men will not conform to the dictates of reason without restraint.”

## A HAPPY HOME

“Six things are necessary to create a ‘happy home.’ Integrity must be the architect, and tidiness the upholsterer. It must be warmed by affection, lighted up with cheerfulness; and industry must be the ventilator, renewing the atmosphere and bringing in fresh salubrity day by day; while over all, as a protecting canopy and glory, nothing will suffice except the blessing of God.”—*Said by Hamilton.*

“Last night I saw one of the wonders of the world, a man laboring at midnight for the support of his family, who had made the fortune of the Nation.” Thus wrote Talleyrand of Hamilton after the latter retired from public to private life.

Said Judge Ambrose Spencer: “Alexander Hamilton was the greatest man this country ever produced. I knew him well. I was in situations often to observe and study him. I saw him at the bar and at home. He argued cases before me while I sat as judge on the bench. Webster has done the same. In power of reasoning Hamilton was the equal of Webster; and more than this can be said of no man. In creative power Hamilton was infinitely Webster’s superior. \* \* \* It was he, more than any other man, who thought out the Constitution of the U. S., and the details of the government of the Union; and, out of the chaos that existed after the Revolution raised a fabric every part of which is instinct with his thought. I can truly say that hundreds of politicians and statesmen of the day got both the web and woof of their thoughts from Hamilton’s brains. He, more than any man, did the thinking of the time.”

## POLITICS

“The amelioration of the condition of mankind, and the increase of human happiness, ought to be the leading objects of every political institution, and the aim of every individual, according to the measure of his power, in the situation he occupies.”

## LIBERTY

“Natural liberty is the gift of the beneficent Creator of the whole human race.”

## THE LAWYER—HAMILTON

Hamilton’s ability as a lawyer is shown in *Le Guen v. Gouverneur* and *Kemble*, argued before the Court of Errors in 1800; in *Croswell v. The People*, before the Supreme Court, in 1804; in the law discussions in the *Federalist*, (of which he wrote over one-half, at the age of 30); and in



his opinion as to the Constitutionality of the Bank of the U. S., 1791.

In the case of *Croswell v. People*,—Croswell had been indicted and convicted of a libel upon Thos. Jefferson. The libel consisted in charging Mr. Jefferson with having paid one Callendar, a printer, for grossly slandering George Washington and John Adams, the former Presidents; and the defendant offered to prove the truth of the charge. But the testimony was overruled by Chief Justice Lewis, who held the circuit, and he charged the jury that it was not their province to decide on the intent of the defendant, or whether the libel was true or false or malicious; that those questions belonged exclusively to the Court. The motion was for a new trial for misdirection of the Judge, and those two great points in the case were elaborately discussed before the Supreme Court, and they were considered by General Hamilton, who appeared gratuitously for the defendant, as affecting the constitutional right of trial by jury in criminal cases, and the American doctrine of the liberty of the press. (The author's synopsis.)

Chancellor Kent said of the argument: "I have always considered General Hamilton's argument in that cause the greatest forensic effort that he ever made."

The appellate court was equally divided, so nothing was decided, but Hamilton's argument bore fruit as the N. Y. Legislature passed a statute the next year in conformity with his contention.

The opinion as to the Constitutionality of the Bank of the U. S. was given Washington, by Hamilton, as one of his cabinet, against the opinions of Thomas Jefferson, his Sec. of State, and that of Edmund Randolph, his Attorney-General. Hamilton's views were adopted by Washington, and were followed by Chief Justice Marshall, in *McCulloch v. Maryland*, the great judge remarking, "There was nothing in the whole field of argument that had not been brought forward by Hamilton." The doctrine was here laid down by Hamilton "that the implied powers of the Constitution are upon an equality with those expressly granted." And this is now the recognized canon of constitutional interpretation.

### HAMILTON

"Hamilton was the most accomplished and versatile man in America, the most brilliant of conversationalists, the most genial of companions, and hospitable of hosts. \* \* \* He made \$15,000 a year in his legal practice,—a large sum for those times. Upon one occasion he was sent \$8,000 for winning a suit, and returned \$7,000. If a case interested him, and a man asked his services, and was poor, he would accept nothing. Washington, after the retirement of Jay, offered him the Chief Justiceship of the U. S. His position as the highest authority on constitutional law has never been rivalled. Said Chancellor Kent,—The celebrated libel case of *Crowell v. The People*, in which Hamilton reversed the law of libel, was the greatest forensic effort of his life. \* \* \* I have very little doubt that if General Hamilton had lived twenty years longer, he would have rivalled Socrates, or Bacon, or any other of the sages of ancient or modern times, in researches after truth and in benevolence to mankind. The active and profound statesman, the learned and eloquent lawyer, would probably have disappeared in a great degree before the character of the sage and philosopher, instructing mankind by his wisdom and elevating the country by his example."

—*Gertrude Atherton's Conqueror*, 444 and 501.-3

### HAMILTON AT 19

"Hamilton was the astutest politician at nineteen years of age that ever lived."—*Geo. Pellet, in his Life of John Jay*, 53.



## ANDREW HAMILTON (1676-1741), Pennsylvania

### POWER

"Power may justly be compared to a great river; while kept within its bounds, it is both beautiful and useful; but when it overflows its banks, it is then too impetuous to be stemmed; it bears down all before it, and brings destruction and desolation wherever it comes. If then this is the nature of power, let us at least do our duty, and like wise men (who value freedom) use our utmost care to support liberty, the only bulwark against lawless power, which, in all ages, has sacrificed to its wild lust, and boundless ambition, the blood of the best men that ever lived. I hope to be pardoned, Sir, for my zeal upon this occasion; it is an old and wise caution, 'That when our neighbor's house is on fire we ought to take care of our own.' For though, blessed be God, I live in a government where liberty is well understood, and freely enjoyed; yet experience has shown us all (I'm sure it has to me), that a bad precedent in one government, is soon set up for an authority in another; and therefore I cannot but think it mine, and every honest man's duty, that (while we pay all due obedience to men in authority) we ought at the same time to be upon our guard against power, wherever we apprehend that it may affect ourselves or our fellow-citizens.

"\* \* \* But to conclude; the question before the Court, and you, gentlemen of the jury, is not of small nor private concern; it is not the cause of a poor printer, nor of New York alone, which you are now trying. No! It may, in its consequence, affect every freeman that lives under a British government on the main of America. It is the best cause; it is the best cause of liberty; and I make no doubt but your upright conduct, this day, will not only entitle you to the love and esteem of your fellow citizens; but every man, who prefers freedom to a life of slavery, will bless and honor you, as men who have baffled the attempt of tyranny; and, by an impartial and uncorrupt verdict, have laid a noble foundation for securing to ourselves, our posterity, and our neighbors, that to which nature and the laws of our country have given us a right—the liberty—both of exposing and opposing arbitrary power (in these parts of the world, at least) by speaking and writing truth."

—*In defense of John Peter Zenger, of N. Y., for libel.*

The jury brought in a verdict of 'Not Guilty.' The case was printed in New York, Boston and London. Hamilton's effort was a half century before Erskine contended in the Dean of St. Asaph's case, that the jury in a libel case had the right to determine both the law and the fact.

—*The Author.*



BURTON HANSON, (1851- ) Illinois

### FRANKLIN—EDUCATION

“In reviewing the life of this remarkable man, it is not difficult to find the springs of success, for they were the common virtues of the common, every-day, useful life. These virtues were worth while then, and they are worth while now. The fruits of temperance, frugality, industry, sincerity, moderation, justice and humility are the same now as in Franklin’s time, and the observance of these virtues will develop a race of strong men now, as they did then. (Franklin set aside a page in a little book to each of 12 virtues,—temperance, silence, order, resolution, frugality, industry, sincerity, justice, moderation, cleanliness, tranquillity, chastity—giving a week to each for 27 years, to acquire the habit of each and discipline his life.) Whenever we note the results of a great life, we see that they were attained by ceaseless efforts, strenuous living, and endless self-culture. Perfection is the result of work only and that is the reason that genius is the infinite capacity for hard work, and work was the presiding genius of Franklin’s life. He was never idle. When an apprentice to his brother learning the printer’s trade, he spent the noon hour studying, eating his luncheon at the same time, while others were idle, or amusing themselves with games. This habit of work formed early in life clung to him to the end. It was work, persistent, intelligent work, that was the keynote of this great man’s great life. Franklin thought more, said more, and did more that is of enduring value, than any man yet born under American skies, and yet he was without a college education. In fact, he never had but eight months’ schooling, but he had acquired out of his life, a well-trained, disciplined mind, and a sturdiness of character which schools and universities cannot give. America has had free education from the beginning and yet the men who have made America are without university degrees with such few exceptions that the academically educated are lost in the overwhelming majority who have trained themselves. The fact is that most of the academically educated are working for those who never had any schooling beyond that afforded by the country school. Much of the confusion in this matter arises from the fact that training and education are confounded. Most of the young men who graduate from our schools and universities get scarcely any training, and, when confronted with the real problems of life, shrink from them, fail, and are forgotten. This is largely so because the way has been made too easy. I concede that the State ought to supply the opportunity for elementary study, but only those who earn their way ought to have the path beyond made easy. Young men who have a hunger for an education, and for the training and discipline that come only out of struggle and sacrifice, will blaze their own paths through the forest of difficulties. The others should be supported and pampered into intellectual incapacity. \* \* \*

“When the great philosopher was lying on his deathbed, Washington thus wrote to him:—

“‘If to be venerated for benevolence, if to be admired for talents, if to be esteemed for patriotism, if to be beloved for philanthropy, can gratify the human mind, you must have the present consolation to know that you have not lived in vain; and I flatter myself that it will not be ranked among the least grateful occurrences of your life, to be assured that so long as I retain my memory, you will be recollected with respect, veneration, and affection.’

“A philosophy that produces a life like this is worth while. When we think of Franklin, with his burden of nearly 100 years, devoting him-



self unreservedly to the betterment of human kind everywhere, of the vast span of his activities, of the kindliness of his bearing, of the splendor of his munificence, and of his indomitable loyalty to the essentials of right living and good government, we feel that tho the fashion of his life is old, it can never become outworn. Washington, Jefferson, Adams, Hamilton, Madison and Marshall were all great men—a mighty host—but ‘tried by the arduous greatness of things done,’ no greater man or nobler figure ever stood in the forefront of a nation’s life than Benjamin Franklin.”

—*From Annual Address, delivered before the Iowa State Bar Ass’n, June, 1917.*

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### PATRIOTISM

“Learning,” says Lord Bacon, “should be made subservient to action;” and your action will largely depend on the conception which you form in youth of the duties and privileges involved in that greatest civic virtue and most important element of national character which we ever call patriotism. What is this patriotism, this almost universal instinct for which more men have given their lives than for any other cause, and which counts more martyrs than even religion itself—this potent sentiment which has produced so great and splendid deeds of heroic bravery and of unselfish devotion—which has inspired art and stimulated literature, and furthered science—which has fostered liberty, and won independence, and advanced civilization—and which on the other hand has sometimes been understood and perverted and made the excuse for brutal excesses and arbitrary tyranny?

“Doctor Johnson, in his dictionary, tells us that a patriot is ‘one whose ruling passion is the love of his country,’ and that patriotism is ‘love and zeal for one’s country,’ and we may accept these definitions as his serious interpretation of the words, although, as we shall see directly, the doctor indulged on another occasion in a more cynical explanation.”

—*Joseph Chamberlain of England, at Glasgow University, Nov. 3, 1897*



## BEN HARDIN (1784-1852), Kentucky

### RESTRAINTS OF LAW—NORTH AND SOUTH

"I know that it will be argued that there is a wider latitude given to the restraints of law in the Southern than in the Northern States, and a false assumption is built upon this circumstance, that the free use of personal liberty, to avenge private quarrels, gives greater bravery to people. But I have read, I have witnessed, and I believe that the people of New England, a section of this great republic where you can get no man to fight duels and where every man throws himself under the protection of the law for the redress of his private wrongs, when they have been called into the field for the protection of their country, have shown the brightest examples in modern history of personal bravery and national valor. Show me where men have been more prompt to rush upon bayonets of their country's invaders than the heroes of New England. Sir, courage and bravery belong to the respecters of the law which protects every man's rights in a civilized community. Climate, in a country of such vast extent as this, may have its influence on men, as it is known to have on the inferior race of animals. You may meet the lion, distinguished for his courage and his power, in the Barbary States, where, conscious of his strength, you may pass him unmolested, if you are not the aggressor. As you descend to the more southerly latitudes, you meet the leopard and the panther, with whom treachery and ferocity are the substitutes for courage; and when you pass the equator you meet the hyena, the emblem of uncompromising cruelty, without a redeeming quality. Men may, in like manner, be affected by climate; and he who on the iron-bound coast of the frozen North, or on the arid rocks of New Plymouth, would illustrate very noble virtue of his own nature, not less distinguished for his piety than his patriotism, for his endurance than his courage, and for his generosity than his bravery, when transplanted to the enervating regions of the South, may become different and degenerated, trusting more to his interests than his patriotism, to advantage than to courage, and to concealed weapons than to bravery."

—*For the Prosecution of Judge E. C. Wilkinson, Dr. Benj. R. Wilkinson, and John Murdaugh, at Harrodsburg, Ky., 1839. (Defended by S. S. Prentiss. Defendants were acquitted in 15 minutes by the Jury.) For the Murder of Meeks and Rothwell.*

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### CARTER ON CHARLES O'CONOR

"O'Connor was the greatest lawyer of his time. He never carried his soul to the treasury and said: 'what will you give me for this?' He never sold the warm and honorable motives of his youth and manhood for an annual sum of money and an office. He never took a price for public liberty and public happiness. He never touched the political A-cel-damma (any place stained by slaughter), and signed the devil's bond for cursing tomorrow what he has blessed today. Through a long career he cast honor upon his honorable profession and sought dignity, not from the ermine or the mace, but from a straight path and a spotless life."

—*Remarks made 20 years before O'Connor's death, upon 'The Leader of the American Bar of the Preceding Generation,' 8 'Great American Lawyers,' 41.*



## GEORGE HARDING (1827-1902), Pennsylvania

### THE ART OF FELTING

"The fact that when fibers of wool or fur are moistened and rubbed together, they would interweave spontaneously and form the fabric called felt, has been known from a remote antiquity. The process of felting is believed to have been anterior to the art of weaving. In Asia felted wool was used at a very early day for making tents, cushions, and carpets. It was known to the Greeks as early as the age of Homer, and is mentioned by him, and also by Xenophon and Herodotus. Its use was introduced into Rome from the Greeks, and it is mentioned by Pliny. The principal use of felting among the Greeks and Romans was the making of a covering for the head of the male sex, which was generally a sort of skull-cap, fitting closely to the head, and it was somewhat used for lining shields and helmets, and representations of this are found on many old coins and statues. Felt hat-makers appeared in France, in Nuremberg and in Bavaria early in the fourteenth century.

"I thus allude to the antiquity of the process of felting, with a view to call your attention to the curious circumstance that the discovery of the true cause of felting is of very recent date. Why the fibers of fur and wool should felt, or spontaneously interweave, when moistened and rubbed (a property which no vegetable fiber possesses) was never satisfactorily demonstrated until about the year of 1835. It had been conjectured by Monge, a French savant, in 1790, that felting was probably due to small scales on the fibers of fur or wool; but, as nothing of the kind was found by the aid of the microscope, the idea was ridiculed by Dr. Young and other philosophers, who contended that the felting of wool or fur fibers was due simply to the attraction of adhesion, the same principle by which the two halves of a leaden ball adhere together. Mr. Youatt, an intelligent English naturalist, in 1835, in investigating the subject of felting, carefully re-examined the fibers of wool, and the fur of rabbits and other animals, under a powerful anchromatic microscope, and found that each fiber of fur or wool has its surface covered with serrations of saw-like projections, and that all these serrations pointed in a direction from the root toward the point of the hair."

—*From argument before the U. S. Supreme Court, in Burr v. Duryee, 1 Wallace, 531 (1864)*

Mr. Harding was one of the most celebrated Patent Lawyers this country has produced and tried the most complicated patent cases of his day. His method may be gained from the following trial:

"In October, 1859, he was one of the counsel for the defendant in a trial of three weeks of an action at law, based on the Battin patent of a machine for breaking coal. At that time, the patent had been in litigation for nine years against other defendants, with inconclusive results. The machine consisted of two-toothed rollers, geared together and rotating side by side, at a uniform speed but in opposite directions, with the teeth of each roller working in the spaces between the teeth of the other roller, but not filling those spaces. The case was too simple to require much argument, and therefore Mr. Harding could take occasion to be entertaining. He did blend entertainment with instruction, through a speech to the jury of nearly twenty thousand words. Such a blending occurred in that part of his speech which contemplated cows, as this:

" 'Cows are what are called ruminating animals, they belong to the order called *ruminantia*. They have an extra stomach into which the food goes, whence it is afterward brought up and chewed again. This, as you



know, is called *chewing the cud*, neither is mastication a mere grinding into powder, as Mr. Porter has told you; the salivary glands perform a part of the work. If the learned gentleman had these glands disordered, so that no saliva would be mixed with his food, he would soon suffer from dyspepsia. So would cattle. One purpose for which we chew our food is that it may properly be mixed with saliva, which is the first of those fluids that in animals take part in the process of digestion.'

"The discourse on Cows and the chemistry of digestion, was scientifically correct."—8 *Great American Lawyers*, 64-5.

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### LOOKING FORWARD

"Ought we to go always through life condemned of ourselves and thinking and feeling that God must condemn us? Is this a necessity? Is it not possible to so live that our own conscience approves us? And we have the happiness of feeling that we have the approval of God and of our own hearts? Was it not Paul's experience? It is true that we ought never to be satisfied with ourselves—that our ideal of holiness ought always to outrun our attainments; that we ought always to desire something more and better. But we may be self-approved and not self-satisfied. We may be dissatisfied and yet not self-condemned.

"It is thus at eighty years of age that I look back upon the years that have passed since I imbibed something of the spirit of faith and hope and love in my grandfather's home in Farmington. I am far from satisfied with this review; but I am not self-condemned. I say to my Father as I say to myself: 'I have often been defeated, but I have fought a good fight; I have often faltered and fallen, but I have kept up the race; I have been besieged all my life with doubts, and they still sometimes hammer at the gates, but I have kept my faith.' And I look forward to the Great Adventure, which now cannot be far off, with awe, but not with apprehension. I enjoy my work, my home, my friends, my life. I shall be sorry to part with them. But all my life I have stood in the bow looking forward with hopeful anticipation to the life before me. When the time comes for my embarkation, and the ropes are cast off and I put out to sea, I think I shall be standing in the bow and still looking forward with eager curiosity and glad hopefulness to the new world to which the unknown voyage will bring me."

—*Lyman Abbott, in concluding words of his 'Reminiscences'.*



JUDSON HARMON (1846- ), Ohio

### OURS A THRIFTLESS NATION

"It is said that what were luxuries in one age of the world become necessities in another; but it is easy to deceive yourself on that subject. You should remember that you do not really need a thing the lack of which causes you no worse suffering than that of ungratified desire or unsatisfied pride.

"The average wages, salaries and incomes are higher in this country than in any other, yet our savings banks do not make a creditable showing. Fourteen countries greatly outrank ours in proportion of savings accounts to population. In thrift, as indicated by the savings banks, we stand at the bottom of the list of the principal nations.

"Of every hundred of our citizens, sixty-six leave at their death no estate at all. Only nine leave as much as \$5,000. The average estate left by the other twenty-five is less than \$1,300. Ninety-seven of every hundred lose their earning power at the age of 65, and, as most of them have saved nothing, they become dependent on relatives or on the public. It is estimated that there are 1¼ million of such destitute persons in this country, most of whom might have escaped that sad fate. Let every young man who has to make his way unaided realize that to say, 'I have money in the bank' is a certificate of character and ability.

"There is no doubt that, barring accident and disease, almost every family not dependent on mere unskilled day labor could lay up some provision for the future by cutting off waste and steadily practicing unhurtful self-denial. There must be a choice between passing desire and lasting well-being. The day of small things must not be despised; all growth is from little seeds. Dimes are the germs of dollars.

"A rational person can certainly get no real enjoyment from any outlay that leads to hand-to-mouth existence; he has no safeguards against misfortune that are sure to come sooner or later to everyone.

"Among all material pleasure there is none so great as that which springs from a store laid by for future wants, especially for the needs of those for whose well being you have become responsible. And when you have gathered that store by steadfastly refusing thriftless indulgence, you have satisfaction that outweighs and outlasts all fleeting joys. I speak from my own experience, and I can call to witness thousands of others who have traveled the same road."

—*In Youth's Companion, Dec., 1916.*

### JOHN JAY

"If John Jay had not gone to England and consummated that treaty it would be difficult to tell what the territory that now comprises the United States would be. Another war might have followed. And the outcome of a war at that time is difficult to imagine now. Undoubtedly John Jay saved the United States."

—*At Jay Banquet, Kansas City, Mo., Nov. 14, 1911.*

Judson Harmon remained on his father's farm till 21; studied at Denison University, and Cincinnati Law School; entered the practice with George Hoadly, in Cincinnati; Atty.-General, under Cleveland, 1895-7; professor of law, University of Cincinnati, O., 1896; Governor of Ohio, 1908-12. He is an anti-imperialist, tariff revisionist, and is opposed to centralization of power in the Federal Government.



## ROBERT Y. HAYNE (1791-1839), South Carolina

### SOUTH CAROLINA AND THE SOUTH

“What, sir, was the conduct of the South during the Revolution?

“Sir, I honor New England for her conduct in the glorious struggle. But great as is the praise which belongs to her I think at least equal honor is due to the South. They espoused the quarrel of their brethren with a generous zeal which did not suffer them to stop to calculate their interest in the dispute. Favorites of the mother country, possessed of neither ships nor seamen to create a commercial rivalry, they might have found in their situation a guaranty that their trade would be forever fostered and protected by Great Britain. But trampling on all considerations either of interest or of safety, they rushed into the conflict, and fighting for principle, periled all in the sacred cause of freedom. Never was there exhibited in the history of the world higher examples of noble daring, dreadful suffering, and heroic endurance than by the Whigs of Carolina during the Revolution. The whole State, from the mountains to the sea, was overrun by an overwhelming force of the enemy. The fruits of industry perished on the spot where they were produced, or were consumed by the foe. The ‘plains of Carolina’ drank up the most precious blood of her victims. Black and smoking ruins marked the places which had been the habitations of her children! Driven from their homes into the gloomy and almost impenetrable swamps, even there the spirit of liberty survived, and South Carolina (sustained by the example of her Sumters and her Marions) proved by her conduct that tho the soil might be overrun, the spirit of her people was invincible.”

Hayne attained great prominence as a lawyer; member of the S. C. Legislature; attorney-general of the State; U. S. Senator, (1823-1832), had his great debate with Daniel Webster in the Senate, in 1830; and was afterwards Governor of S. C.

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### THE FUNERAL ORATION OF PERICLES

“A few years after our Civil War, a lawyer in a city of the Middle West, who had been selected to deliver the Memorial Day oration, came to a friend of his in despair because he could write nothing but the commonplace about those who had died for the Union and for the freedom of a race which had been uttered many times before, and he asked for advice. ‘Take the funeral oration of Pericles for a model,’ was the reply. ‘Use his words, where they will fit, and dress up the rest to suit our day.’ The orator was surprised to find how much of the oration could be used bodily, and how much, with adaptation, was germane to his subject.”

—James Ford Rhodes, in *‘Historical Essays.’*



## JOHN HEMPHILL (1803-1862), Texas

### THE HOMESTEAD LAW

"We do not intend to assert the proposition, that the old homestead remains until a new is gained. This would perhaps too much embarrass and obscure the condition and rights of property, to receive judicial sanction; there being no law or statute to that effect. But while this is admitted, we must remember the wise and beneficent purposes of the homestead exemption; that it was intended to secure the peace, repose, independence, and subsistence of citizens and families; that it was placed beyond the reach of creditors, an asylum upon which they might gaze, but which they could neither enter nor disturb; a right so strongly secured, founded upon such high policy, cannot be lost by the mere absence of the party or family intended to be benefited. The homestead is not to be regarded as a species of prison bounds, which the owner cannot pass over without pains and penalties. His necessities and circumstances may frequently require him to leave his homestead for a greater or less period of time. He may leave on visits of business or pleasure, for the education of his children, or to acquire in some more favorable location, means to improve his homestead; or for the sustenance of his family or he may intend to abandon, provided he can sell. But let him leave for what purpose he may, or be his intentions what they may, provided they are not those of total relinquishment or abandonment, his right to the exemption cannot be regarded as forfeited."

—*The above is from his decision in Shepherd v. Cassidy, 20 Texas, 24.*

He was appointed a member of the Supreme Court of the Republic of Texas, in 1840, and held that office till 1858, 18 years, when he was elected to the Senate of the United States, from which he withdrew upon the passage of the ordinance of secession of the Texas convention which met in 1861.

### PREFERRED THE CIVIL LAW

"I cannot say that I am very much in favor of either chancery or the common law system. I should much prefer the civil law to have continued in force for years to come. But inasmuch as the chancery system, together with the common law, has been saddled upon us, the question is now, whether we shall keep it up as it is known in the courts of England, the United States, and many of the states, and in the United States courts that will be established here, we should oppose this innovation; for I do not know any alteration which could be a greater innovation than to subject all chancery cases to a trial by jury."

### JUDGE HEMPHILL'S HABITS

"He spent a solitary life, without a wife and without relatives, in the state of his adoption (having been born in S. C.) whose prosperity and greatness he loved and worked to achieve. It is due to him, that his remains should, as they do, rest in the state cemetery and a modest and becoming monument marking the spot where he lies and his likeness should be suspended in the room of the Supreme Court where his presence always commanded the respect due his exalted position of Chief Justice."—*Judge O. M. Roberts of Texas.*



## PATRICK HENRY (1733-1799), Va.

### DANGERS UNDER THE CONSTITUTION

"This Constitution is said to have beautiful features; but when I come to examine these features, sir, they appear to me horribly frightful. Among other deformities, it has an awful squinting; it squints toward monarchy, and does not this raise indignation in the breast of every true American? Your president may easily become king. Your Senate is so imperfectly constructed that your dearest rights may be sacrificed to what may be a small minority; and a very small minority may continue forever unchangeably this government, altho horridly defective. Where are your checks in this government? Your strongholds will be in the hands of your enemies. It is on a supposition that your American governors shall be honest that all the good qualities of this government are founded; but its defective and imperfect construction put it in their power to perpetrate the worst of mischiefs should they be bad men; and, sir, would not all the world, from the Eastern to the Western Hemisphere, blame our distracted folly in resting our rights upon the contingency of our rulers being good or bad? Show me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men without a consequent loss of liberty! I say that the loss of that dearest privilege has ever followed, with absolute certainty, every such mad attempt.

"If your American chief be a man of ambition and abilities, how easy is it for him to render himself absolute! The army is in his hands, and if he be a man of address, it will be attached to him, and it will be the subject of long meditation with him to seize the first suspicious moment to accomplish his design, and, sir, with the American spirit solely relieve you when this happens? I would rather infinitely—and I am sure most of this Convention are of the same opinion—have a king, lords, and commons, than a government so replete with such insupportable evils. If we make a king we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them; but the president, in the field, at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck under the galling yoke. I cannot with patience think of this idea. If ever he violate the laws, one of two things will happen: he will come at the head of the army to carry everything before him, or he will give bail, or do what Mr. Chief Justice will order him. If he be guilty, will not the recollection of his crimes teach him to make one bold push for the American throne? Will not the immense difference between being master of everything and being ignominiously tried and punished powerfully excite him to make this bold push? Can he not, at the head of his army, beat down every opposition? Away with your president! We shall have a king: the army will salute him monarch; your militia will leave you, and assist in making him king, and fight against you: and what have you to oppose this force? What will then become of you and your rights? Will not absolute despotism ensue?"

—*From a speech June 5, 1788, in Va. Convention to ratify the constitution of the U. S.*

In 1773 Robt. Carter Nicholas, "who had himself enjoyed the first practice at the bar," turned over his unfinished legal business to Patrick Henry. Washington invited him into his cabinet, as Secretary of State, in 1795; and three months later to be Chief-Justice of the Supreme Court of the United States,—both of which he declined. He made a fortune in the law.



## GIVE ME LIBERTY OR GIVE ME DEATH

"Mr. President, it is natural to man to indulge in the illusions of Hope. We are apt to shut our eyes against a painful truth, and listen to the song of that siren till she transforms us into beasts. Is this the part of wise men, engaged in a great and arduous struggle for liberty? Are we disposed to be of the number of those who, having eyes, see not, and having ears, hear not, the things which so nearly concern their temporal salvation? For my part, whatever anguish of spirit it may cost, I am willing to know the whole truth; to know the worst, and to provide for it. I have but one lamp by which my feet are guided, and that is the lamp of experience. I know of no way of judging of the future but by the past. And, judging by the past, I wish to know what there has been in the conduct of the British ministry, for the last ten years, to justify those hopes with which gentlemen have been pleased to solace themselves and the House. Is it that insidious smile with which our petition has been lately received? Trust it not, sir; it will prove a snare to your feet. Suffer not yourselves to be betrayed with a kiss. Ask yourselves how this gracious reception of our petition comports with those warlike preparations which cover our waters and darken our land. Are fleets and armies necessary to a work of love and reconciliation? Have we shown ourselves so unwilling to be reconciled, that force must be called in to win back our love? Let us not deceive ourselves, sir. These are the implements of war and subjugation—the last arguments to which kings resort.

"I ask, gentlemen, sir, what means this martial array, if its purpose be not to force us to submission? Can gentlemen assign any other possible motive for it? Has Great Britain any enemy in this quarter of the world to call for all this accumulation of navies and armies? No, sir, she has none. They are meant for us: they can be meant for no other. They are sent over to bind and rivet upon us those chains which the British ministry have been so long forging.

"And what have we to oppose to them? Shall we try argument? Sir, we have been trying that for the last ten years. Have we anything new to offer upon the subject? Nothing. We have held the subject up in every light of which it is capable; but it has been all in vain. Shall we resort to entreaty and humble supplication? What terms shall we find which have not been already exhausted?

"Let us not, I beseech you, sir, deceive ourselves longer. Sir, we have done everything that could be done to avert the storm which is now coming on. We have petitioned; we have remonstrated; we have supplicated; we have prostrated ourselves before the throne, and have implored its interposition to arrest the tyrannical hands of the ministry and Parliament. Our petitions have been slighted; our remonstrances have produced additional violence and insult; our supplications have been disregarded; and we have been spurned with contempt from the foot of the throne.

"In vain, after these things, may we indulge the fond hope of peace and reconciliation. There is no longer any room for hope. If we wish to be free; if we mean to preserve inviolate those inestimable privileges for which we have been so long contending; if we mean not basely to abandon the noble struggle in which we have been so long engaged, and which we have pledged ourselves never to abandon until the glorious object of our contest shall be obtained—we must fight! I repeat it, sir—we must fight! An appeal to arms, and to the God of hosts, is all that is left us.

"They tell us, sir, that we are weak—unable to cope with so formidable an adversary. But when shall we be stronger? Will it be the next week or the next year? Will it be when we are totally disarmed, and when a British guard shall be stationed in every house; shall we gather strength by irresolution and inaction? Shall we acquire the means of effectual



resistance by lying supinely on our backs, and hugging the delusive phantom of hope, until our enemies have bound us hand and foot?

"Sir, we are not weak, if we make a proper use of those means which the God of nature hath placed in our power. Three millions of people armed in the holy cause of liberty, and in such a country as that which we possess, are invincible by any force which our enemy can send against us.

"Besides, sir, we shall not fight our battles alone. There is a just God who presides over the destinies of nations, and who will raise up friends to fight our battles for us. The battle, sir, is not to the strong alone: it is to the vigilant, the active, the brave. Besides, sir, we have no election. If we were base enough to desire it, it is now too late to retire from the contest. There is no retreat but in submission and slavery. Our chains are forged. Their clanking may be heard on the plains of Boston. The war is inevitable. And let it come! I repeat it, sir, let it come!

"It is vain, sir, to extenuate the matter. Gentlemen may cry peace, but there is no peace. The war is actually begun. The next gale that sweeps from the north will bring to our ears the clash of resounding arms. Our brethren are already in the field. Why stand we here idle? What is that gentlemen wish? What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty, or give me death."

—*At a Revolutionary Convention, March 23, 1775, in Richmond, Va. (From Wirt's Life of Henry.)*

### THE BRITISH DEBTS CASE

"The first point which I shall endeavor to establish will be, that debts in common wars become subject to forfeiture; and if forfeited in common wars, much more must they be so in a revolution war, as the late contest was. In considering this subject, it will be necessary to define what a debt is. I mean by it an engagement or promise by one man to pay another for a valuable consideration an adequate price. By a contract thus made for a valuable consideration, there arises what, in the law phrase, is called a *lien* on the body and goods of the promisor or debtor. This interest which the creditor becomes entitled to in the goods and body of his debtor is such as may be taken from the creditor, if he found the subject of a hostile country. The position is supported by the following authorities. (Here Grotius and Vattel were cited.)

"This authority decides, in a most clear and satisfactory manner, that, as a nation, we had powers as extensive and unlimited as any nation on earth. This great writer, after stating the equality and independence of nations, and who are and who are not enemies, does away the distinction between corporal and incorporeal rights, and declares that war gives the same right over the debts as over the goods of an enemy. He illustrates his doctrine by the instance of Alexander's remitting to the Thessalians a debt due to the Theban commonwealth. This is a case in point; for Thebans might not have remitted the debts due them to that people, as well as the debts due them by his allies, the Thessalians? Let me not be told that he was entitled to the goods of the Thebans because he had conquered them. If he could remit a debt by those whose claim of friendship was so inferior, those who were only attached to him by the feeble ties of contingent and temporary alliance; if his Macedonians, his immediate and natural subjects, were indebted to the Thebans could he not have remitted their debts?

"This author states, in clear, unequivocal terms, by fair inference an unavoidable deduction, that when two nations are at war, either nation has a right, according to the laws of nature and nations, to remit to its own citizens debts which they may owe to the enemy. If this point wanted further elucidation, it is pointedly proved by the authority



which I first quoted from Grotius that it is an inseparable concomitant of sovereign power, that debts and contracts similar to those which existed in America at the time the war with Great Britain broke out, may, in virtue of the eminent domain or right, be canceled or destroyed. 'A king has a greater right in the goods of his subjects for the public advantage than the proprietors themselves. And when the exigency of the State requires a supply, every man is more obliged to contribute toward it than to satisfy his creditors. The sovereign may discharge a debtor from the obligation of paying either for a certain time or forever.' What language can be more expressive than this? Can the mind of man conceive anything more comprehensive?

"Rights are of two sorts: private and inferior, or eminent and superior, such as the community had over the persons and estates of its members for the common benefit. The latter is paramount to the former. A king or chief of a nation has a greater right than the owner himself over any property in the nation. The individual who owns private property cannot dispose of it, contrary to the will of his sovereign, to injure the public. This author is known to be no advocate for tyranny, yet he mentions that a king has a superior power over the property in his nation, and that by virtue thereof, he may discharge his subjects forever from debts which they owe to an enemy. The instance which our author derives from the Roman history affords a striking instance of the length to which the necessities and exigencies of a nation will warrant it to go. It was a juncture critical in the Roman affairs. But their situation was not more critical or dangerous than ours at the time these debts were confiscated. It was after the total defeat and dreadful slaughter at Cannae, when the State was in the most imminent danger. Our situation in the late war was equally perilous. Every consideration must give way to the public safety. That admirable Roman maxim, *salus populi suprema lex*, governed that people in every emergency. It is a maxim that ought to govern every community. It was not peculiar to the Roman people. The impression came from the same source from which we derive our existence. Self-preservation, that great dictate implanted in us by nature, must regulate our conduct; we must have a power to act according to our necessities, and it remains for human judgment to decide what are the proper occasions for the exercise of this power.

"Call to your recollection our situation during the late arduous contest. Was it not necessary in our day of trial to go to the last iota of human right? The Romans fought for their altars and household gods. By these terms they meant everything dear and valuable to men. Was not our stake as important as theirs? But many other nations engage in the most bloody wars for the most trivial and frivolous causes. If other nations who carried on wars for the mere point of honor, or a punctilio of gallantry, were warranted in the exercise of this power, were not we who fought for everything most inestimable and valuable to mankind, justified in using it? Our finances were in a more distressing situation than theirs at this awful period of our existence. Ours was in opposition to the most grievous oppression; we existed, and our resistance was approved and blessed by heaven. The most illustrious, who have considered human affairs, when they have involved human rights and considered how far a nation is warranted to act in cases of emergency, declare that the only ingredient essential to the rectitude and validity of its measure is, that they be for the public good. I need hardly observe that the confiscation of these debts was for the public good."

(The case was argued twice; in 1791, before Judge Johnson and Blair of the Supreme Court, and Griffin, Judge of the District, and again in 1793, before Judges Jay and Iredell, and the same district Judge. The case was decided against Mr. Henry, in favor of the English creditor (2 Paine's C. Ct. Rep., 688). The above argument was made in the first hearing and is taken from Wirt's Life of Henry. Mr. Ronald,



Mr. Baker, Mr. Wickham, and Mr. Starke, for plaintiff; Mr. Henry, Mr. Marshall (afterwards Chief Justice), Mr. Alexander Campbell, and Mr. Innis (Attorney-General of Va.), for defendant. Mr. Henry occupied three days in his speech, from which the above is taken—to a crowded court-room, where the greatest living orators drew legislators, senators, ladies of fashion, and everybody as listeners.)

#### PATRICK HENRY ON MADISON

“I can forgive anything else in Mr. Jefferson, except his corruption of Mr. Madison.”—*2 Beveridge's Marshall*, 79 note.

#### HENRY CLAY ON THE COMPROMISE OF 1850

“Look at all history—consult her pages, ancient or modern—look at human nature; look at the contest in which you would be engaged in the supposition of war following upon the dissolution of the Union, such as I have suggested; and I ask you if it is possible for you to doubt that the final disposition of the whole would be some despot treading down the liberties of the people—the final result would be the extinction of this last and glorious light which is leading all mankind who are gazing upon it in the hope and anxious expectation that the liberty which prevails here will sooner or later be diffused throughout the whole civilized world. Sir, can you lightly contemplate these consequences? Can you yield yourself to the tyranny of passion, amid dangers which I have depicted in colors far too tame, of which the result would be if that direful event to which I have referred should ever occur? Sir, I implore gentlemen, I adjure them, whether from the South or the North, by all that they hold dear in this world—by their love of liberty—by all their veneration for their ancestors—by all their regard for posterity—by all their gratitude to Him who has bestowed on them such unnumbered and countless blessings—by all the duties which they owe to mankind—and by all the duties which they owe to themselves, to pause, solemnly to pause at the edge of the precipice, before the fearful and dangerous leap be taken into the yawning abyss below, from which none who ever take it shall return in safety. Finally, Mr. President, and in conclusion, I implore as the best blessing which Heaven can bestow upon me upon earth that if the direful event of the dissolution of this Union is to happen, I shall not survive to behold the sad and heartrending spectacle.”

—*Henry Clay, on 'The Compromise of 1850', Feb. 5 and 6, in U. S. Senate.*

Clay died in 1852.—*The Author.*



## BENJAMIN H. HILL (1823-1882), Georgia

### ROBERT E. LEE

"When the future historian shall come to survey the character of Lee he will find it rising like a huge mountain about the undulating plain of humanity, and he must lift his eyes high toward heaven to catch its summit. He possessed every virtue of other great commanders without their vices. He was a foe without hate, a friend without treachery, a soldier without cruelty, a victor without oppression and a victim without murmuring. He was a public officer without vices, a private citizen without wrong, a neighbor without reproach, a Christian without hypocrisy, and a man without guile. He was a Caesar without his ambition, Frederick without his tyranny, Napoleon without his selfishness and Washington without his reward. He was obedient to authority as a servant, and royal in authority as a true king. He was as gentle as a woman in life, modest and pure as a virgin in thought, watchful as a Roman vestal in duty, submissive to law as Socrates and grand in battle as Achilles."—*Passages from his Eulogy on Robt. E. Lee.*

### FATE

"Who has not felt how he works—the dreadful, conquering spirit of Ill? Who cannot see in the circle of his own society the fated and foredoomed to woe and evil? Some call the doctrine of Destiny a dark creed; but, for me, I would fain try and think it a consolatory one. It is better, with all one's sins upon one's head, to deem one's self in the hands of Fate than to think with our fierce passions and weak repentances; with our resolves so loud, so vain, so ludicrously, despicably weak and frail; with our dim, wavering, wretched conceits about virtue, and our irresistible propensity to wrong—that we are workers of our future sorrow or happiness. If we depend on our strength, what is it against mighty circumstances? If we look to ourselves, what hope have we? Look back at the whole of your life, and see how Fate has mastered you and it. Think of your disappointments and your successes. Has your striving influenced one or the other? A fit of indigestion puts itself between you and honors and reputation; an apple plops on your nose and makes you a world's wonder and glory; a fit of poverty makes a rascal of you, who were and are still an honest man; clubs, trumps, or six lucky mains at dice, make an honest man for life of you, who ever were, will be and are a rascal. Who sends the illness? Who causes the apple to fall? Who deprives you of your worldly goods? Or who shuffles the cards and brings trumps, honor, virtue and prosperity back again? You call it chance; aye, and so it is chance that when the floor gives way and the rope stretches tight the poor wretch before St. Sepulche's clock dies. Only with us, clear-sighted mortals, we can't see the rope by which we hang, and know not when, nor how, the drop may fall."

—*In this connection read the Ninth Chapter of Romans.*

### A CALL TO ARMS

"The army is our only safety. It is in the ranks, in the forefront of battle where independence is to be achieved. I discard all mere personality, at this moment, and place life and fortune on the altar of our country, and offer them a free sacrifice for the Sunny South. I could at this moment take in my arms and press to my heart the most hated foe I have on earth, if he will but come to the rescue of our beloved and beleagured



land. Nay, more. I could cover him with immortelles, decorate him with garlands of flowers, and crown him with wreaths of laurel or of bay. Awake! Arise! Ho, to the rescue every one! Our country is in danger! Let us conquer victory or welcome glorious death!"

—*From speech made in the late winter of 1865—just before Ap-pomattox—in a tour of Georgia, calling the citizens to arms.*

Hill was born in Jasper Co., Ga.; educated in the University of the State; admitted to the bar, 1845; State Representative, 1851-60; supported the Union until the passage of the secession ordinance; Senator from the State, in Confederate Congress; prisoner of war, in New York, a short time in 1865; representative in Congress, 1875-6, resigned upon being elected to Senate, 1876, where he served till his death. His life has been written by his son, 1891.

He was the leader of the Gulf States Bar, and the equal of any lawyer of his day. Some of his fees were enormous for the South,—one \$65,000. What he made at the bar, he lost as a planter. He was always princely and his hand was open. Perhaps he was not the superior of Toombs as a debater; perhaps not the superior of Cobb as an orator; perhaps not the superior of Stephens as a logician; but he was the inferior of none of them in any admirable attribute of the human character, or any great quality of the human mind, and he was a match for all of them as a statesman, as a patriot, and as a man. It was when he first heard him that Toombs paid the splendid compliment and clothed it in the classic speech that is as follows:—

"You may bury him under a mountain that will overtop Pelion and make Ossa a wart, and he will rise again more formidable than ever and more ready for the conflict. He is bound to succeed. He was born to excel."

#### BENJ. H. HILL

"Capt. Wirz was offered his life if he would only implicate Mr. Davis in the horrors of Andersonville. Wirz refused the bribe. Hill made this comment:

"Sir, what Wirz within two hours of his execution, would not say for his life the gentleman from Maine (Jas. G. Blaine) says to keep himself and his party in power. Christianity is a falsehood, humanity a lie, civilization is a cheat, or the man who will not make a false charge for his life was never guilty of willful murder.'"—*Hill's reply to Blaine, in House of Representatives, in 1876.*

#### HILL'S PLEA FOR A REUNITED COUNTRY

"The faces I see before me are those of young men; had I not known this I would not have appeared before you. Men in whose hands destinies of our Southland lie, for love of her I break my silence, to speak to you a few words of respectful admonition. The past is dead; let it bury its dead, its hopes and aspirations; before you lies the future. A future full of golden promise; a future full of recompense, a future of expanding national glory, before which all the world shall stand amazed. Let me beseech you to lay aside all rancor, all bitter sectional feeling and to take your places in the ranks of those who will bring about a consummation devoutly to be wished—a reunited country."—*Said by Hill.*

Hill's nearly last words were, "I know my Redeemer liveth," and his very last words, "Almost home."—*Author.*



## NICHOLAS HILL (1806-1859), New York

### INFLUENCE

"There is nothing in what is termed personal influence with courts. He who thoroughly understands his case and the law applicable to it will have the attention of the judges. Argue the case yourself; never stop to consider who is against you, there is not so much difference after all between men as some suppose, the language of the law is the same to all."—*To M. S. Newton.*

### CALLING ABLE COUNSEL TO ASSIST

"In my early practice I was once induced to procure the aid of a lawyer who was supposed to have great influence with the court to assist me in urging the judge to inflict a very light sentence on a client of mine, who had been convicted of an offense in which there were mitigating circumstances and which admitted of a severe or a light punishment, in the discretion of the court. The lawyer to whom I applied was at the time a State Senator, and was really a man of great influence and ability, while I was young and inexperienced and almost a stranger to the judge. My client was a man of some standing in the community; his sentence was suspended until the last day of the term; when he was brought into court to receive it, his wife and children accompanied him by the advice of my associate, who believed that their presence would aid him in softening the mind of the court. I saw by this that even he needed outside influence to aid him, powerful as he was supposed to be with the court. My friend made a pathetic appeal to the court. It was apparently very effective, and I believed with his great influence he would succeed in convincing the judge that my client should only be fined some nominal amount and discharged, but what was my astonishment and horror when I listened to a sentence which was to incarcerate him in jail for one year and compel him to pay a fine of \$200. I will not attempt to describe the scene that followed; suffice it to say that wife, children, friends and myself were plunged into the deepest sorrow. The influence of my counsel had failed and my client was ruined."

Hill got a modification of the sentence by his own efforts and the imprisonment remitted and the fine reduced to \$50.—*Author.*

### NICHOLAS HILL

"The administration of justice presents the noblest field for the exercise of human capacity. It forms, as has been well said, the ligament that binds society together. Upon its broad foundations is erected the edifice of public liberty. To lend humble aid, in raising this structure to a valued privilege, but to stand pre-eminent among those who at the bar or upon the bench have beautified and adorned the temple of justice, is among the loftiest positions allotted to man."

—*From Eulogy of Nicholas Hill, by his partner, Jno. H. Reynolds.*



## GEORGE HOADLY (1826-1902), Ohio

### ADVICE TO YOUNG LAWYER

"In my opinion there are three things which I regard of primary importance to the young lawyer who would secure a large practice and an honorable reputation in the community. One of these acquirements, and the one to which I would first call attention, is the possession of faculty, or, if you please to call it, genius or talent. And while a man is responsible for the employment of the best he has of this, he certainly cannot be held responsible for more than that. This leads me to say that no young lawyer is to be blamed for the lack of a greater degree of faculty than he was given by the Almighty. But such a young man certainly is to be blamed for the misuse of the talents which the Creator has bestowed upon him. Every young lawyer has at his command two things which can insure for him success—that is, as much success as his natural gifts entitle him to—and that is absolute integrity to his clients and to himself. The successful lawyer depends much upon his true courage and absolute integrity in dealing with his adversaries. Nor can he succeed without industry, for unremitting labor is required until he has given evidence of his talents and integrity. The young lawyer must patiently await his time, and he who is a faithful and diligent laborer in acquiring knowledge, and adds to this fidelity to his clients, will eventually succeed. A great many lawyers of only moderate ability, having in early life adopted this course of action, have been very successful in their profession."

### IMMORTALITY OF A GREAT JUDGE

"I have seen in Venice, around the frieze of the large room in the Doges' palace, the names, with a single exception, of all the Doges of Vencie,—great men in their day and generation, to whose hands had been committed, each for a little time, the power of the Republic. These men are forgotten. Not half a dozen names of those hundreds are remembered or ever mentioned now. In history only the victor Doges, or those in whose hands was the government of Venice during the hours of extreme perplexity or prosperity, appear; and so it will be with us. The time will come when the Presidents of our Republic will be numbered by hundreds, Great as his high office may seem during the brief tenure of power allotted to each, they will, nevertheless, be very obscure persons, indeed, when compared with the men to whom was vouchsafed the opportunity of recording in judicial judgment decisions of lasting import, upon which depend the lives, liberty, and property of those generations, as well as of ages to follow. To-day, Lord Coke's memory is gratefully preserved by every American lawyer, while even the names of the Prime Ministers of James the First have been forgotten."

—*Remarks in U. S. Supreme Court, upon the death of Justice John A. Campbell, of La., Apr. 6, 1889.*

### AGAINST JURY SYSTEM

"I have long considered the jury system as a defect in our jurisprudence. It is illogical in theory and mischievous in practice. In theory it is illogical because it substitutes a tribunal of untrained thinkers (if, indeed, they may be called thinkers at all), for the experts who preside in our courts, experts who are trained in the analysis of facts and the solution of doubts, growing out of such analysis, as well as in the legal principles. No man can feel at all certain that the verdict of a jury is right in any



case, and in suits against corporations the jury system is the most potent adjunct to the levying of blackmail, and the dishonest practices of 'ambulance lawyers,' which exists. The amount of harm done by what jurors conceive to be their right or duty, under the pretense which they make to their consciences, of disposing the charity of corporations in this country is incalculable. Another objection remains to the jury system; it is its deteriorating influence upon the bar, its tendency to convert thinkers and scholars and the followers of logical processes into stump-speakers and blatherskites. The man who is capable of wringing sympathy or tears from a jury, and there are many such in the United States, is a foe to justice in a criminal case. With the rule that the criminal defendant shall not be required to testify, and with the persuasive efforts of orators, the American system contrasts very badly in results with the method in which justice is dispensed in France. Whatever may be said of the turbulent and disorderly conduct of some of the Judges in the French Republic, it cannot be denied that, as a rule, French jurists reach *just* results far more frequently than in this country, where the *popular* result is that which is usually achieved in cases of this kind.

"There are cases in which the jury system may be justified. There are those cases in which public prejudice is strongly enlisted upon two sides, and in which the judge may be fairly entitled to have the right to transfer the responsibility of passing upon the facts to some tribunal (a jury or other) which will relieve him from the injury that would be the result of the prejudice that might be enlisted against him personally. Such cases, however, are very rare, and the power to select a board of referees, if conferred upon the judge, would enable him to escape from the scandal that would be the result of *his* popular identification, after decision, with one or other of the parties. It certainly is not necessary for this purpose that twelve men should be called from their avocations into a jury-box.

"Another and very serious objection to the jury system would be obviated by dispensing with the requirement of unanimity. If verdicts were permitted to be found by a majority or two-thirds of a jury, they would be as likely to be right as they are now, and would avoid the mistrial that so frequently occurs in consequence of there being what is called 'a hung jury.' In cities (I do not know how far it is true in the country) the decent citizens, the very men who would make the best jurors, at least so far as integrity goes, seek to escape from the performance of the duty. Every judge knows the very great extent to which shifts and devices of all sorts and kinds are resorted to as excuses for citizens who seek to escape from the useless consumption of time involved in the performance of their duty. It is said that bribery is not unfrequently employed in such cases, but of this I know nothing. Finally, let me say that during forty years of active service at the bar and on the bench in Ohio I never saw but one struck jury. Of course, I must be understood to mean this, not that I have not seen men in the box whose names had been procured by the process of striking a jury, but that I never saw twelve such men sitting together in a case, except once in Wilmington, Clinton County, Ohio. I name the county out of respect for the willingness displayed to serve on juries in the case I refer to by that class of citizens who, in Hamilton County, would have been sufficiently alert and successful with excuses to reduce the jury below the number of twelve struck jurors, and thus make it an ordinary tales jury."

—*From the Western Reserve Law Journal, Feb., 1896.*

Judge Hoadly was born in New Haven, Conn., educated at Western Reserve College, O., and at the Harvard Law School; admitted to the bar in 1847; judge of the Superior Court of Cincinnati, O., 1851; city solicitor '55, and was on the bench of the new superior court 1858-66. In 1883 was elected governor of Ohio; after 1887 he practiced in N. Y. City.

—*Author.*



## BARTHOLOMEW HOAR, Ireland

### THE CORNISH PLUNDERER

"The Cornish plunderer, intent on the spoil, callous to every touch of humanity, shrouded in darkness, holds out false lights to the tempest-tost vessel, and lures her and her pilot to that shore upon which she must be lost forever—the rock unseen, the ruffian invisible, and nothing apparent but the treacherous signal of security and repose. So, this prop of the throne, this pillar of the State, this stay of religion, the ornament of the Peerage, this common protector of the people's privileges and of the crown's prerogatives (Marquis of Headfort), descends from these high grounds of character to muffle himself in the gloom of his own base and dark designs; to play before the eyes of the deluded wife and the deceived husband (Rev. Charles Massy), the falsest lights of love to the one, and of friendly and hospitable regards to the other, until she is at length dashed upon the hard bosom where her honor and happiness are wrecked and lost forever. The agonized husband beholds the ruin which those sensations of horror which you can better feel than I can describe. Her upon whom he had embarked all his hopes and all his happiness in this life, the treasure of all his earthly felicities, the rich fund of all his hoarded joys, sunk before his eyes into an abyss of infamy, or if any fragment escape, escaping to solace, to gratify, and to enrich her vile destroyer.

"Such, gentlemen, is the act upon which you are to pass your judgment, such is the injury upon which you are to set a price, and I lament that the moderation of the pleader has circumscribed within such narrow limits the discretion you are to exercise upon the damages. You cannot exceed the damages laid in the declaration. I lament, and so I hope do you, that you cannot, for the damages laid do not exceed one year's income of the noble Lord's estates. (The damages were laid at 40,000 pounds.) The life of the adulterer is in some degree in the power of the injured husband. If the husband kill the adulterer caught in the act, the killing is not murder: what, according to the noble Lord's own estimate, would be the value of the noble Lord's life? In mine, and perhaps in your estimation, the value of the noble Lord's life would not be very high; but take it according to his own, and it is invaluable. The ransom of his life ought to be the measure of your damages. What can he plead? Is it that he too has a wife and children? Is it that as a double adulterer he comes into this court of justice and interposes the innocence of his family between his crime and your justice? Are his tithes and honors, as they are vulgarly called, to dazzle your eyes and blind you, to the demerits of his conduct? No, no. What are titles conferred by kings if the souls of those who wear them be not ennobled by the King of kings? These badges of distinction, these splendid emblems of shining merit; these rewards conferred by grateful sovereigns on eminent attainments in science, or achievements in war, may be well allowed to adorn wisdom and virtue, but cannot make the fool wise, the coward brave, or the knave honest."—*In Massy v. The Marquis of Headfort for Plaintiff.*



## GEO. F. HOAR (1826-1904), Massachusetts

### GREAT SONS OF MASSACHUSETTS

"No American State, no civilized nation, has contributed more illustrious names to jurisprudence than Parsons and Mason and Story and Shaw. In statesmen, Bradford, and Carver, Endicott, and Winthrop; Vane, Otis, Samuel Adams, Quincy and Hawley; John Adams and his son, whose biographies almost make up the history of the country for eight years; Pickering, who filled in turn every seat in the Cabinet; Webster, the greatest teacher of constitutional law save Marshall; Andrew, the great war governor; Sumner, the echoes of whose voice seem yet audible in the Senate chamber.

"In science, Bowditch, and John Pickering, and Wyman and Pierce; and which contains the birthplace of Franklin, and the home and grave of Agassiz; Whitney, the inventor of the cotton gin; Sam'l F. Morse, the inventor of the telegraph; Dr. W. T. G. Morton, the discoverer of the uses of ether.

"In History, Bancroft, Sparks, Motley, Prescott, Palfrey, Parkman; and in Poets, Byrant, Emerson, Whittier, Longfellow, Lowell and Holmes; in Oratory, Quincy, Otis, Choate, Everett, and Webster; in Education, Horace Mann; in the Ministry, Channing, Parker, Beecher, and a host of others."

—*Geo. F. Hoar, of Mass. Extract from speech in H. of R. at Washington, on the occasion of the presentation of statues of John Winthrop and Samuel Adams to the U. S., 1876.*

### GEORGE F. HOAR'S EPITAPH

"I have no faith in fatalism, in destiny, in blind force. I believe in God, the living God. I believe in the American people, a brave and free people, who do not bow the neck or bend the knee to any other, and who desire no other to bow the neck or bend the knee to them. I believe that a republic is greater than an empire. I believe finally whatever clouds may darken the horizon that the world is growing better, that today is better than yesterday, and that tomorrow will be better than today."

—*Written by himself and to be placed on his monument in Concord, Mass.*

### LAW—THEN AND NOW

"The old lawyer and the old judge began his education by obtaining, as far as might be, a mastery of legal principles. In general his first inquiry was, if any legal problems were presented to him, if it were a question of common law, 'what is the general rule?' If it were the question of the construction of a statute, 'What construction of the statute will make of it a just general rule?' In applying the common law to any state of facts he took it for granted that the common law was the perfection of reason, and that it contained what the experience of ages had found to be the most just and convenient rules of conduct for mankind in dealing with each other in matters concerning property, or reputation, or liberty, or life. When the student, or the counselor at law, or the judge had made up his mind on that, he then considered the adjudged cases with the view of fortifying his own opinion by their authority. If he found them in conflict with that opinion, before yielding to them, he did his best to reconcile them with his idea of justice, to limit and restrict



them as far as possible and, unless the current of authority were too strong, to get them overruled if they were wrong. The study of the law was a study of ethics or moral philosophy."

—*Geo. F. Hoar—Mass., Historical Society Proceedings, Vol. 18, p. 159.*

## HUMOR

"Humor is not the proper accompaniment when men are on trial for their lives, in framing constitutions, bill of rights, or denouncing great crimes, nor is there any record that the Savior, the Apostles, or the Prophets, had much humor."—*Geo. F. Hoar—On Chas. Sumner.*

## SIDNEY BARTLETT

"Sidney Bartlett, of the Boston Bar, was a man whose processes of reasoning bore about the same relation to those of ordinary lawyers that logarithms bear to common arithmetical processes."—*Geo. F. Hoar.*

## THE AMERICAN FLAG AWAY FROM HOME

"I have seen the glories of art and architecture and of river and mountain. I have seen the sunset on Jungfrau and the full moon rise over Mount Blanc. But the fairest vision on which these eyes ever rested was the flag of my country in a foreign port. Beautiful as a flower to those who love it, terrible as a meteor to those who hate it, it is the symbol of the power and the glory and the honor of ninety millions of Americans."—*Geo. F. Hoar.*

## DELIBERATION, WISDOM, CHARACTER

"Every generation since the dawning of civilization seems to have been gifted with its peculiar capacity. The generation of Homer has left nothing behind but a great epic poem, which for thirty centuries remains without a rival. Italian art had its brief and brilliant day of glory, which has departed and has never returned. The time of Elizabeth was the time of dramatic poetry, which has been alike the wonder and the despair of all succeeding ages. The generation which accomplished the American Revolution had a genius for forming constitutions which no generation before or since has been able to equal or to approach. The features of the State constitutions framed in that day have been retained with little changes in substance, and have been copied since by every new state."

—*Geo. F. Hoar—a man of thought, not of action, an accomplished debater, an erudite scholar, a learned jurist, a consummate master of his mother tongue.*

## WAR WITH SPAIN DEPLORED

"I confess I do not like to think of the genius of America angry, snarling, shouting, screaming, kicking, clawing with her nails. I like rather to think of her in her august and serene beauty, inspired by a sentiment, even towards her enemies, not of hate, but of love, perhaps a little pale in the cheeks and a dangerous light in her eyes, but with a smile on her face, as sure, as determined, unerring, invincible as was the Archangel Michael when he struck down and trampled upon the demon of darkness."

—*Geo. F. Hoar, 1898, in Congress.*

## TO THE VIRGINIA BAR ASS'N.

"I am not vain enough to take this invitation from the famous bar of your Commonwealth as a mere personal compliment. I like better



to think of it as a token of the willingness of Virginia to renew the old relations of esteem and honor which bound your people to those of Massachusetts when the two were the leaders in the struggle for independence. There is no more touching story of the magnificence and bounty of one people to another than that of Virginia to Massachusetts when the port of Boston was shut by act of Parliament and by a hostile English fleet. I dare say generous Virginia had disdained to remember the transaction. Massachusetts will never forget it."

—*Geo. F. Hoar.*

### AN OCEAN VOYAGE

"To a person who can bear an ordinary voyage there is no retreat like an ocean steamer. Telephone, telegraph, daily paper, call or visit of friend, client, or constituent; daily mail—sometimes itself, to a busy public man, enough for a hard day's work—all these are forgotten. You spend your ten days in an infinite quiet like that of heaven. You sit in your arm-chair, with the soft sea-breeze on your forehead, as the mighty ocean cradle rocks you, and see the lace of an exquisite beauty that no Tyrean weaver ever devised, breaking over the blue or purple waves with their tints that no Tyrean dye ever matched. Ah! Marconi, Marconi, could not you let us alone, and leave the tired brain of humanity one spot where this 'hodge-podge' of business and trouble and care could not follow us and find us out?"

—*Geo. F. Hoar's Autobiography of Seventy Years, Vol. 2, p. 204.*

### CALEB CUSHING

"General Cushing was a man of great accomplishment, though never a great lawyer. He could collect with wonderful industry all the facts bearing on any historic question and everything that had been said on either side of any question of law. But he never had a gift of cogent argument that would convince any judge or jury. He owed his success in life largely to the personal favor of men who knew him and were charmed by his agreeable quality. He was regarded by the people of Massachusetts as a man without moral convictions and as utterly subservient to the slave power. So his appointment to the Supreme Bench of Massachusetts by Governor Boutwell was a great shock to the Anti-Slavery men and made them believe that it was not safe to put political power in Democratic hands. General Cushing vindicated this opinion afterward by the letter written when he was Attorney-General in the cabinet of President Pierce declaring that the Anti-Slavery movement in the North 'must be crushed out,' and also by a letter written to Jefferson Davis after the beginning of the Rebellion recommending some person to him for some service to the Confederacy. The discovery of this letter compelled President Grant who had been induced to nominate him for Chief Justice to withdraw the nomination. The other cause was the passage of the bill for the prohibition of the manufacture and sale of intoxicating liquors, known as the Maine law."

—*Geo. F. Hoar, 1 Autobiography of Seventy Years, 173-4.*

### BEN BUTLER'S FUNERAL

When Senator Geo. F. Hoar was asked if he was going to attend Butler's funeral, he replied: "No, but I approve of it."



## E. ROCKWOOD HOAR (1816-1895), Massachusetts

### JAMES FORD RHODES ON E. ROCKWOOD HOAR

“Another excellent appointment of Grant’s was his Attorney-General, E. Rockwood Hoar, who was then a judge of the Supreme Court of Massachusetts. Hoar sprang from the ‘oldest and purest English New England stock.’ Impressing his Massachusetts companions as a ‘typical New Englander, essentially Puritan,’ he seemed to one apart from that community a man of broad intelligence and sympathy. It was ‘a sense of humor and spirit of kindliness’ that made him a citizen of the world and demonstrated to the guest of his home in Concord that ‘the noble frugality and quiet dignity of his little town might cradle the widest views of life.’ In Washington, during his term of office his manners were thought brusque, but in Concord they were always marked by gentle considerateness. ‘Emerson loved him,’ and Lowell, in a private letter to Nordhoff, paid him this tribute: ‘You cannot set too high a value on the *character* of Judge Hoar. The extraordinary quickness and acuteness, the *flash* of his mind (which I never saw matched but in Dr. Holmes) have dazzled and bewildered some people so that they were blind to his solid qualities. Moreover, you know there are people who are *afraid* of wit and cannot see wisdom unless in the deliberate movement of thought whose every step they can accompany. I have known Mr. Hoar for more than thirty years, intimately for nearly twenty, and it is the solidity of the man, his courage and his integrity that I value most highly.’ J. D. Cox, whose association with him in the Cabinet was the beginning of a life-long friendship, wrote that ‘a heartier accord with all that is right and true, a warmer sympathy with whatever makes for progress and tends to level men upward, was never seen.’ ”

—6 *Jas. Ford Rhodes’ Hist. U. S.*, 239-40.

Hoar was judge of the Mass. Supreme Court (1859-69); Attorney General of the U. S. under Pres. Grant, (1869-70); drew the Treaty of Washington, (1871); was one of the overseers of Harvard University, (1867-1887), from which college he graduated, 1835, and its Law School, 1839.—*Author*.

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### JURY SYSTEM

“It is a grateful task to bear testimony to the excellent conduct of jurors at the old Bailey sessions (Denman sat on the bench of a criminal court, before he was made Chief Justice). I don’t remember a single conviction that appeared to be unjust; some acquittals have startled me; but often very good reasons, which had not occurred to me at the trial, have been suggested afterwards, and I have often thought that their mistakes might be traced to their feeling too much difference for certain vulgar scraps of judicial phraseology, which have come to be considered as principles of law.”—*Lord John Campbell*.



## THOS. HOBBS (1588-1679)

### SOME READ TOO MUCH

"If I had read as many books as other men, I should have been as ignorant as they are." (A saying of Hobbes.)

### DESIRE

"Our nature is inseparable from desires, and the very word desire—the craving for something not possessed—implies that our present felicity is not complete."—*Thos. Hobbes, 1588-1679, Eng.*

### A MASTER OF SYSTEM

"According to an eminent critic, only Aristotle and Kant were Hobbes' equals in what may be called the genius of system—the logical filiation of doctrines having the broadest and more diverging consequences. His influence is even now predominant in one of the leading schools of speculative science, both in England and this country. The modesty of Locke is as evident as the haughtiness and dogmatism of Hobbes."

—*Francis Bowen's Modern Philosophy, 4.*

### AS A PHILOSOPHER

"As a philosopher Hobbes is generally regarded as the father of English materialism. Locke was largely influenced by him in the development of the 'sensation' theory of Knowledge. The principles of Thomas Hobbes were called 'Hobbism.' He considered religion to be a mere engine of state, and man by nature altogether a ferocious and selfish being, requiring the strong hand of despotism to keep him in check. It is as a political philosopher that Hobbes' fame is greatest. The object of his 'Leviathan' is to determine the object of Sovereignty. This he finds in an original social compact, whereby man, weary of the insecurity of the state of nature, which is a state of war, agrees to submit to the authority of the individual of individuals strong enough to repress anarchy. This compact, once made, is permanent, and cannot be annulled at the wish of the subjects; and it is the duty of the sovereign to repress all rebellion as a crime against society. The sovereign maintains his position by force, not by consent. Nevertheless, the citizens are not loser, because any government is better than the primitive anarchy."

—*Jas. E. G. de Montmorency, in the 'World's Great Jurists,' 208.*

### THE NATURAL STATE OF MAN

"The natural state of man is a state of war of all against all; as a proof of this, see the Indians and savages in a natural state. Peace is the result of science and civilization."



## OLIVER WENDELL HOLMES, Jr. (1841- )

### A LEGAL DUTY

"A legal duty so-called is nothing but a prediction that if a man does or omits certain things he will be made to suffer in this or that way by judgment of the court:—and so of a legal right. \* \* \* The first thing for a business like understanding of the matter is to understand its limits, and therefore I think it desirable at once to point out and dispel a confusion between morality and law, which sometimes rises to the height of conscious theory and more often, and indeed constantly, is making trouble in detail without reaching the point of consciousness. We can see very plainly that a bad man has as much reason as a good man for wishing to avoid an encounter with the public force, and therefore you can see the practical importance of the distinction between morality and law.

"\* \* \* I think that the judges themselves have failed adequately to recognize their duty of weighing considerations of social advantage. Their duty is inevitable, and the result of the often proclaimed judicial aversion to deal with such considerations is simply to leave the very ground and foundation of judgments inarticulate and often unconscious, as I have said. When socialism first began to be talked about, the comfortable classes of the community were a good deal frightened. I suspect that this fear has influenced judicial action both here and in England, yet it is certain that it is not a conscious factor in the decisions to which I refer. I think that something similar has led people who no longer hope to control the legislatures to look to the courts as expounders of the Constitutions, and that in some courts new principles have been discovered outside the bodies of those instruments, which may be generalized into acceptance of the economic doctrines which prevailed about fifty-years ago, and a wholesale prohibition of what a tribunal of lawyers does not think about. I cannot but believe that if the training of lawyers led them habitually to consider more definitely and explicitly the social advantages on which the rule they lay down must be justified, they sometimes would hesitate where now they are confident, and see that really they were taking sides upon debatable and often burning questions."

—*Before the Boston University School of Law, given by Mr. Justice Holmes in 1897.*

### PURSUIT OF THE LAW

"One of the good things about the law is that it does not pursue money directly. When you sell goods the price which you can get and your own interests are what you think about in the affair. When you try a case you think about the ways to win it, and the interests of your client. In the long run, this affects one's whole habit of mind, as anyone will notice if he talks much with men."—*Justice O. W. Holmes.*

### UNSCHOLARLY LAWYER MAY BE SUCCESSFUL

"A certain amount of education a man must have who constantly is using books. It will save him trouble if he understands an occasional scrap of Latin when he comes across it. But a man may sweep juries before him, command the attention of judges, counsel sagely in great affairs, or be a leader in the Senate of the country with nothing of the scholarly about him."—*Oliver Wendell Holmes, Jr. (Mass.), 1841.*



Graduated from Harvard, at 25, admitted to Suffolk Bar, at 26; taught constitutional law at Harvard, at 29 and 30; appointed to Supreme Court of Mass. at 41, in 1882, retiring in 1902 to take his place as an Associate Justice of the U. S. Supreme Court, which position he still occupies.

—*Author.*

## RECEIVER

"A receiver is a gun that is a good deal easier to fire off than it is to control after it is fired."—*O. W. Holmes, Jr.*

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## ROBERT EMMET

"His fame does not rest, like the common reputations of great men, upon the achievements of a long career, for history has only half saved from waste of time, events in which he had a share. It rests upon the fact that in anxious and disturbed times, when the hearts of his countrymen had sunk within them, this fearless man, bearing within his breast the injuries of an afflicted nation, was ready with willing sacrifice to lay down his life for the emancipation of his country. \* \* \* This century now coming to an end, early reversed the judgment of the King's Commission which doomed Robert Emmet to death. About his times have gathered the masters of song and fable and the cheap framework of useless lumber upon which he died has become the tribute from which he speaks today in the ears of all the world. Nor is it strange that men should listen now to words which were heard with angry impatience by his accusers, for the century to which he speaks has begun to understand the cause of Ireland in equity. It has learned to look upon the grim *regime* of anarchy plus the constable (if you will permit the phrase from old Carlyle) and to see the fallen and prostrate figure of Justice. The nineteenth century knows that there are not laws in all the statute-books of men effectually to put to confusion the eternal law of Right. It makes no apology for the blunders and crimes which have attended the exercise of English authority in Ireland, but in good faith has begun to offer visible redress for the grievances of the unhappy island. It knows that the record of the government of Ireland is against the real spirit of English liberty. It remembers that the most splendid tribute ever paid to the English Constitution was paid by John Philpot Curran in defence of an Irishman accused of high treason in 1784. It believes that the common law, broadened by the influence of a generous century, is adequate to secure the rights of men in every quarter of the British Empire."

—*Jonathan P. Dolliver (1858-1910), of Iowa, at Cooper Union, N. Y., March 3, 1892.*



## JOHN HOLT (1642-1710) England

### SOMEWHAT OF HOLT'S CAREER

John Holt was born at Thame, Oxfordshire, England, Dec. 30, 1642; died March 5, 1710; son of a barrister and sergeant-at-law; educated at grammar school and at Oxford, which he left without a degree; where tradition says his friends and companions were a very dissipated set, one of which lived to be tried for a felony, and that upon Holt's visiting him in jail, and asking about his old companions, was told by the felon that all had been hanged but himself and his lordship. Another story is, that finding himself in the vicinity of Oxford, without money, he procured a week's lodging at an inn, by pretending to charm away the ague from the landlady's daughter, by binding round her arm a scrap of parchment, on which he had scrawled Greek letters to look like a spell, and that in after years this scrap of writing was put in as the principal evidence against an old woman indicted before him of sorcery, whereupon Holt told the jury the story, and directed an acquittal.

He was called to the bar at 21, and at 31 figured with some frequency in the reports; at 37 defended the Earl of Danby in his impeachment; also Lords Powis and Arundel, two of the five popish lords were impeached the same year. He appeared in various cases for the Crown in popish plots, and election riots; was counsel for Lord Russell for complicity in the Rye House plot on 1683; was for the East India Co. in its case against Sandys for infringement of their monopoly; acted privately as counsel for Lord Clarendon.

He was appointed Chief Justice of the king's bench in 1689, at 47 years of age, which office he held till death, for over twenty years. He was a sworn foe to prosecutions for witchcraft, as suspicious of their reality as Lord Hale was credulous; settled the law of bailments in *Coggs v. Bernard*, his opinion therein being followed by the text-writers since, beginning with Sir William Jones; drafted, or suggested the act of parliament, placing promissory notes upon the same footing as bills of exchange, in point of negotiability, and by his decision did much to settle the law relating to these securities.

In his judgment in the indictment of Charles Knollys, who claimed to be the Earl of Banbury, for murder, he became involved in a contest with the House of Lords, in which that branch of parliament threatened to imprison him for contempt. But he maintained the independence of the judicial over the legislative branch of the government, and the matter was dropped.

In *Ashby v. Aylesbury*, he maintained that a voter when deprived of his right to cast his vote had a remedy against whomsoever deprived him of that right; that it was a wrong, and every wrong had a remedy. In this case he aroused the wrath of the House of Commons, as they interfered to protect the returning officer, Aylesbury, who failed to record the vote of White. There is a mythical story that Holt defied the Speaker of the House, who with his numerous train of attendants threatened to commit the Judge, and Holt is said to have replied to the Speaker and his retinue, "Begone, or I will forthwith commit you, had you all the House of Commons in your belly."—*The Author*.

### LORD HOLT UPON THE RIGHT TO VOTE

"Ashby had a right to give his vote; and if he was obstructed in the enjoyment or exercise of that right, he might legally bring an action against the disturber. If the plaintiff has a right, he must of necessity have a



means to vindicate and maintain it; and, indeed, it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal. It is no objection to say that it will occasion multiplicity of actions; for if men will multiply injuries, actions must be multiplied too; for every man that is injured ought to have his recompense. And, if public officers will infringe men's rights, they ought to pay greater damages than other men, to deter and hinder other officers from the like offences. To allow this action will make public officers more careful to observe the constitutions of cities and boroughs, and not to be so partial as they commonly are in all elections, which is, indeed, a great and growing mischief, and tends to the prejudice of the peace of the nation. A right that a man has to give his vote to the election of a person to represent him in parliament, there to concern himself to the making of laws which are to bind his liberty and property, is a most transcendent thing, and of a high nature, and the law takes notice of it as such divers statutes. 'The right of vote is a right in the plaintiff by the common law, and consequently, he shall maintain an action for the obstruction of it.'

The majority of the Bench having pronounced a different opinion, judgment was given for the defendant; but on Jan. 14, 1703, this judgment was reversed on appeal in the House of Peers, by fifty lords against sixteen, and Holt was sustained, he declaring, "It is a right, denying his English right; and, if this action is not allowed, a man may forever be deprived of it. It is a great privilege to choose such persons as are to bind a man's life and property by the laws they make."

Here, however, the affairs of the electors and the returning officers did not end. In Dec., 1704, John Paty and four others, who had also prosecuted an action at common law against the constables of Aylesbury, were committed to Newgate by a warrant from the Speaker for a breach of the privilege of the House. Their counsel having moved for an *habeas corpus*, they were brought up to the Court of Queen's Bench, when three of the Judges were for remanding them to prison, but Holt gave his opinion, in the clearest and strongest manner, that they ought to be discharged, saying:

"I am very sorry, I am forced to differ from my brethren, but, whatever inconveniences or dangers I may incur, I think myself obliged to act according to my conscience. I must declare it is my opinion, that the prisoner ought to be discharged, because it is an illegal commitment; and Magna Charta says, '*Quod Nemo imprisonetui nisi per legem terra*,' and, if prosecuting a legal action in a legal method can justify a commitment then no Englishman's freedom is safe. It is by the law of the land, that the House of Commons have their being, therefore it can never be in the power of the Commons to control law. It is by Magna Charta that the liberty of an Englishman is preserved; and without destroying the constitution of England, the liberty of an Englishman cannot be taken from him but for a legal cause. It is pretended that acting legally is a breach of the privileges of the House of Commons, and that we are not judges of it. This is impossible; when the law, by which the House of Commons sits, justifies the prosecution of this action; and it is not in the power of the House of Commons to supersede that which gives them their essence."

"If we can discharge a person committed *per mandatum regis*, a *fortiori*, I think we can discharge from a commitment of the House of Commons. The House of Commons, it is true, have a power over their own members, and may commit them; but to say, that their commitment of any other person (though never so unlawful) is unexaminable, will tend to make Englishmen slaves, which, while I sit here, I can never consent to. I hope never to be overawed from doing justice, and I think we sit here to administer equal justice to all her Majesty's subjects; and, therefore, it is my judgment, that these prisoners ought to be discharged."



## REFUSED THE CHANCELLORSHIP

Holt refused the chancellorship from King William in these words: "I feel highly honored by your Majesty's gracious offer; but all the time I was at the bar, I never had more than one case in chancery, and that I lost, so that I cannot think myself qualified for so great a trust."

—2 *Campbell's 'Lives of the Chief Justices,'* 39.

## CAMPBELL'S ESTIMATE OF HOLT

"Generally speaking, Holt is to be considered a consummate jurist; above all prejudices; misled by no predilection; seeing what the law ought to be; giving precedent its just weight; and no more; able to adapt established principles to the new exigencies of social life; and making us prefer judge-made law to the crude enactments of the legislatures."

—3 *Campbell's 'Lives of the Chief Justices,'* 56.

## BISHOP BURNET ON HOLT

"Holt was a young man for so high a post (Chief Justice, when 26 years of age), and yet he maintained it all his time with a high reputation for capacity, integrity, courage, and great dispatch; so that since the Lord Chief Justice Hale's time that bench had not been so well filled as it was by him."—5 *The British Plutarch,'* 48-63.

(For Samuel Shellabarger's estimate, see 'Shellabarger').

## SOME OF CARTER'S GREAT CASES

He acted as counsel in a great many important cases in the courts of the State of New York, and the United States Supreme Court, among which may be mentioned the Singer, Tilden, Hamersley and Fairweather will cases, each of which involved the disposition of great fortunes; the Tweed and Jumel cases; *Ping v. United States* (130 U. S., 581), in which the treaty with China—the Chinese Exclusion Act—was involved; *Counselman v. Hitchcock* (142 U. S., 547), involving the constitutional right of a witness to decline to give incriminating testimony; *Ex Parte Rapier and Dupre* (143 U. S., 110), involving the constitutionality of the legislation prohibiting the use of the mails for the circulation of lottery advertisements; *Cameron v. United States* (148 U. S., 301), involving land titles under Mexican grants, and the operation of Congressional legislation; *Constable v. The National Steamship Co.* (154 U. S., 51), concerning respective rights of parties to a bill of lading, under somewhat extraordinary conditions; *Hilton v. Guyot* (159 U. S., 113), which involved the effect of a foreign judgment and, incidentally, international law, foreign law and reciprocity; the *Bate Refrigerating Co. v. Sulzberger* (157 U. S., 1), which determined the question of the life of a valuable patent as affected by the termination of a foreign patent, and the meaning of the Act of Congress with reference thereto; the *Income Tax Cases* (157 U. S., 429 and 158 U. S., 601); *United States v. Trans-Missouri Freight Ass'n.* (166 U. S., 290); *United States v. Joint Traffic Ass'n.* (171 U. S., 505), involving the legality of traffic and rate agreements between railroads, and the application of the Inter-State Commerce laws of Congress; *Smyth v. Ames* (169 U. S., 466), which defined, limited and applied the power of a State to control railroad rates; the *North American Commercial Co. v. United States* (171 U. S., 110), involving under government lease of the seal fisheries; and as a culmination of his career, the Bering Sea Arbitration, before an International Court, at Paris, in 1883.—8 *Great American Lawyers,* 23-25.



## ALBERT H. HORTON (1837-1902), Kansas

### IMPORTANCE OF THE LAW

"It is the law that protects your crops in the fields; that guards your cattle feeding upon the hills and in the meadows; that secures the shop, the store and the bank from midnight spoliation; that renders safe the home, the family and all you value as near and dear to you. It is the law that protects the citizens from assault, that guards your treasures from the thief and the robber, that secures you all your rights of person and property, and throws around all of us its ample and protecting shield. It protects you as you meet, in absolute peace, and permits you to consult together over matters of supreme importance to yourselves and individuals, to your country and state, without disturbance from the turbulent, or violence from the lawless. It is, in fact, our sentry by day and our watch by night. Without law, anarchy and confusion would reign supreme. Might would be the only controlling power, and rights of person and property would be respected only so long as they had immediate force at hand to command protection. Disobedience to law tends first to anarchy and then to tyranny, as any government is better than none at all."—1881.

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### HENRY WATERSON ON LAMAR

"Lamar was very many-sided and accomplished, the most interesting and lovable of men, very much at home in European Courts, especially in that of England. He was a man among brainy men and a lion among clever women. \* \* \* I rather think that Lamar was the biggest brained of all the men I have met in Washington. He possessed the courage of his convictions. A doctrinaire—there was nothing of the typical doctrinaire, or theorist about him. He really believed that cotton was king, and would compel England to espouse the cause of the South."—2 *Henry Waterson's Autobiography*, 18-21.

Of his oratory, L. F. Youmans said: "The torch in his hand burned with withering power, and he wielded it without fear of man."



## TEMPLE HOUSTON, Ok'ahoma

### "TELL HER TO GO IN PEACE"

"Gentlemen, you heard with what cold cruelty the prosecution referred to the sins of this woman, as if her condition was of her own preference. The evidence has painted you a picture of her life and surroundings. Do you think they were of her own choosing? Do you think that she willingly embraced a life so revolting and horrible? Ah, no! Gentlemen, one of our sex was the author of her ruin, more to blame than she; then let us judge her gently. What could be more pathetic than the spectacle she presents? An immortal soul in ruins! Where the star of purity once glittered on her girlish brow, burning shame has set its seal forever! And only a moment ago they reproached her for the depths to which she had sunk, the company she kept, the life she led. Now, what else is left for her? Where can she go and her sin not pursue her? Gentlemen, the very promises of God are denied her. He said: 'Come unto me, all ye that labor and are heavy laden, and I will give you rest.' She has indeed labored and is heavy laden, but if at this instant she were to kneel down before us all and confess her Redeemer and beseech His tender mercies, where is the church that would receive her? And even if they accepted her, when she passed the portals to worship and to calm her rest, scorn and mockery would greet her and those she met would gather around them their skirts the more closely to avoid the pollution of her touch. Would you tell me a single employment where she can realize, 'Give us this day our daily bread?' Our sex wrecked her once pure life. Her own sex shrinks from her as it would the pestilence. Society has reared its relentless walls against her and only in the friendly shelter of the grave can her betrayed and broken heart ever find the Redeemer's promised rest. They told you of her assumed names, as fleeting as the shadows on the walls, of her sins, her habits, but they never told you of her sorrows, and who shall tell what her heart, sinful though it may be, now feels, when the remembered voices of mother and sisters, whom she must see no more on this earth, fall again like music on her erring soul and she prays God that she could only return and must not—no, not in this life, for the seducer has destroyed her soul?

"You know the story of the prodigal son, but he was a son. He was one of us, like her destroyer, but for the prodigal daughter there is no return. Were she with her wasted form and bleeding feet to drag herself back to her girlhood home, she, the fallen and the lost, what would be her welcome? Oh, consider this when you come to decide her guilt, for she is before us and we must judge her. They sneer and scoff at her. One should respect her grief and I tell you that there reigns over her penitent and chastened spirit a desolation now that none, no, none but the Searcher of all Hearts can ever know.

"They wish to fine this woman and make her leave. They wish to wring from the wages of her shame the price of this meditated injustice; to take from her the little money she might have, and God knows, gentlemen, it came hard enough. The old Jewish law told you that the price of a dog nor the hire of such as she should not come within the house of the Lord, and I say unto you that our justice, fitly symbolized by woman's form, does not ask that you add aught to the woes of this unhappy one, who only asks at your hands the pitiful privilege of being left alone.

"The Master while on earth, while He spake in wrath and rebuke to the kings and rulers, never reproached one of these. One He forgave, another He acquitted. You remember both, and now, looking upon this friendless outcast, if any of us can say unto her, 'I am holier than



thou,' in the respect which she is charged with sinning, who is he? The Jews who brought the woman before the Savior have been held up to the execration of the world for two thousand years. I always respected them. A man who will yield to the reproaches of his conscience as they did has the element of good in him, but the modern hypocrite has no such compunctions. If the prosecutors of this woman whom you are trying had brought her before the Savior they would have accepted his challenge and each one gathered a rock and stoned her in the twinkling of an eye.

"No, gentlemen, do as your Master did twice, under the very circumstances that surround you. 'Tell her to go in peace.' "

Temple Houston, who volunteered to defend this woman outcast (the technical guilt of whom has been proven), yet the jury returned a verdict of acquittal the moment he had finished speaking. The case was tried in Woodward, Okla., where Houston lived. He was a son of Col. Sam Houston of Texas fame.—*Author.*

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#### BOB TOOMBS, ALEX. STEPHENS AND PETER

Alex. H. Stephens, the old vice-president of the confederacy, used to tell this story, how Peter Bennett, an old Georgia farmer, beat Bob Toombs and Dr. Royston in a law case; and he used to tell it with all the mimicry of Dan Satchett and the elegance of Sam Ward. Dr. Royston sued farmer Bennett for his bill for medical services. "I told Bennett," said Stephens, "that he could make no defense, that Bob Toombs, a promising young lawyer, was on the other side and he surely would beat him."

"Never mind," said Bennett. "I want you to speak to the case."

"No, Bennett," I said, "there's no use. If there is any speaking on this case you'll have to do the talking."

"Very well, I'll do it then," said Peter, "if you'll hold off Bob Toombs."

I told Bennett I'd take care of Toombs, and was utterly surprised when Peter started off his speech to the jury:

"Gentlemen of the jury, I ain't no lawyer and no doctor, and you ain't nuther, and if we farmers don't stick together these here doctors and lawyers will get the advantage of us. I ain't no objections to lawyers and doctors in their place, and some is clever men, but they ain't farmers, gentlemen of the jury. Now this Dr. Royston was a new doctor, and I sent for him to come and doctor my wife's sore leg. And he did, and put some salve truck on it, and some rags, but it never done it a bit of good, gentlemen of the jury. I don't believe he's no doctor, no way. There's doctors as I know is doctors, sure enough, but this ain't no doctor at all."

The farmer was making headway with the jury, when Dr. Royston said, "Here is my diploma."

"His diploma," said Bennett, with great contempt, "that ain't nothin', for no piece of paper ever made a doctor yet."

"Ask my patients," yelled now the thoroughly enraged physician.

"Ask your patients," slowly repeated Bennett, and then deliberating; "ask your patients? Why, they are all dead." Then he rapidly enumerated case after case—most of them among the negro servants and in the neighborhood—of such of the doctor's patients who had succumbed to his pills and powders; and continued: "Ask your patients! Why, I should have to hunt them in the lonely graveyards and rap on the silent tomb to get answer from the dead. You know they can't say nothing in this case, for you've killed them all."

Loud was the applause, and farmer Bennett won his case.



## RICHARD D. HUBBARD, Connecticut

### WORK AND FAME OF LAWYER

"To my thinking, the most rigorous brain work of the world is done in the ranks of our profession. And then our work concerns the highest of all temporal interests, property, reputation, the peace of families, liberty, life even, the foundations of society, the jurisprudence of the world, and as a recent event has shown, the arbitrations and peace of nations. The world accepts the work, but forgets the workers. The waste hours of Lord Bacon and Sergeant Talfourd were devoted to letters, and each is infinitely better remembered for his mere literary diversions than for his whole long and laborious professional life-work. The victory gained by the counsel of the seven bishops was worth infinitely more to the people of England than all the triumphs of the Crimean war. But one Lord Cardigan led a foolishly brilliant charge against a Russian battery at Balaklava, and became immortal. Who led the great charge of the seven great confessors of the English church against the English crown at Westminster Hall? You must go to your books to answer. They were not on horse back. They wore gowns instead of epaulettes. The truth is, we are like the little insects that in the unseen depths of the ocean lay the coral foundations of uprising islands. In the end come the solid land, the olive and the vine, the habitations of man, the arts and industries of life, the havens of the sea and ships riding at anchor. But the busy toilers which laid the beams of a continent in a dreary waste are entombed in their work and forgotten in their tombs."

—*Richard D. Hubbard. Address on the death of Wm. Hungerford of the Hartford Bar, Jan., 1873.*

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### WEBSTER'S PERORATION IN REPLY TO HAYNE (AS WRITTEN)

"When my eyes shall be turned to behold for the last time the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on States dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance rather behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, nor a single star obscured, bearing for its motto, no such miserable interrogatory as 'What is all this worth?' nor those other words of delusion and folly, 'Liberty first and Union afterwards;' but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land and in every wind under the whole heavens, that other sentiment, dear to every true American heart; 'Liberty and Union, now and forever, one and inseparable!'"

—*Reply to Hayne in 1830, in U. S. Senate.*

Webster said to Hiram Ketcham, of the "Reply to Hayne:" "In one sense I had no preparation whatever, but in another sense I was fully prepared. I did not know what words I should use when I rose to my feet, nor the order of argument in which I should proceed. These came to me under the excitement of debate. But I understood the subject as well as I was capable of understanding it. I had studied it; I had often urged similar arguments before other tribunals, and in this sense of the term I was thoroughly prepared."—*The Author.*



## THOMAS H. HUBBARD (1838-1915), Maine

### A LAWSUIT—THE CLIENT'S CONTROVERSY

"The controversy, with all its attendant exasperations, is the clients' controversy. Its aspirations, its irritations, its impulses, its interests are not the lawyer's, save as he receives them in bulk, as a common carrier receives all goods that are offered; if, as the servant of the client, he carries them through all the portals and into the temple of justice, then he gives to his cases the elements that retard justice and bring the practice of the law into disrepute. He obtrudes upon the court the passion, the prejudice, the unreason of the client. These should be left outside the court-house door. The controversy that crosses the threshold should be a controversy sifted by the intelligence and shaped by the conscience of the lawyer. It should be the essence of honest difference in the assertion of rights, not the turmoil of personal dispute."—*In Lecture before students of the Law Dept., Union University, 1903.*

(See under "Erskine" and "Brougham," their theory of defending a bad cause).

Mr. Hubbard practiced law in N. Y. from 1865 to 1894, when he retired to devote himself to railroad, banking and other business enterprises with which he was officially connected.—*Author.*

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### ELIHU ROOT'S EXPERIENCE WITH CREEK INDIANS

"One of the best instances of Mr. Root's readiness in repartee," says Secretary Hitchcock, "was told me by Root's private secretary. It happened when a delegation of Creek Indians had come east to see me on some matters of importance to them; but being misdirected they got by mistake into the War Department. Of course their interpreter merely asked for the Secretary, and the redmen were ushered into Mr. Root's office.

"What was said and done for the first few minutes must have been funny, for the conversation was all at cross-purposes; but at last something was dropped which showed what the visitors wanted, when quick as a flash Root said:

" 'Oh, I see! Gentlemen, you have come to the wrong man. I have jurisdiction over navigable rivers, but not over Creeks,' and he bowed them out."



CHAS. E. HUGHES (1862- ), New York

### AUTONOMY OF THE STATES

"If we did not have States, we should speedily have to create them. We now have them, with the advantages of historic background, and in mastering the serious questions of local administration we at least have the advantage of ineradicable sentiment and cherished traditions. And we may well congratulate ourselves that the circumstances of the formation of a more perfect Union have given us neither a confederation of States nor a single centralized government, but a nation—and yet a union of States, each autonomous in its local concerns. To preserve the essential elements of this system—without allowing State action to throw it out of gear the requisite machinery for unity of control in national concerns demands the most intelligent appreciation of all the facts of our interrelated affairs and far more careful efforts in co-operation than we have hitherto put forth."

—*Justice Chas. E. Hughes, from speech before the N. Y. State Bar Ass'n., Jan. 14, 1916.*

### A JUDGE AND POLITICS

"A judge of the Supreme Court should not be available altho he may be nominally eligible for elective office. The moment he assumes the judicial office he ceases to be a partisan and knows, or should know, no partisan obligation. The moment he accepts a party nomination one or more things happen and happen explicitly. First, a political party may undertake to capitalize judicial decisions and its candidates, than which nothing could be more violative of the spirit of the judicial institution. His decision would, moreover, become subject to the partisan and passionate review of partisan strife. Worst of all, it is not inconceivable that, if men are to step from the bench to elective office, decisions may ultimately be rendered with a view to the contingency of such public and necessarily partisan review. More important than the present political contest, however large it looms at present, is the perpetuating of the organic institutions of the Republic."

Replying to Rabbi Wise's query that a crisis might make it necessary for Justice Hughes to accept the nomination for President, the Justice replied:

"I hope that as a justice of the Supreme Court, I am rendering public service and may continue to do so for some years, but the Supreme Court must not be dragged into politics and no man is as essential to his country's well-being as is the unstained dignity of the courts."

—*Chas. E. Hughes.*

### THE BAR—AN INDEX OF PUBLIC VIRTUE

"The sentiment of the bar is a fair index of public virtue. If its standards are corrupted, the vital forces of society cannot fail to be enfeebled. With a sound, courageous, and independent bar, a foe of demagoguery but a friend to rational improvement, vindicating its expert leadership by intelligent conception of the interests of the community, and by its zeal for the better administration of justice which is its especial care, democracy will not essay its tasks in vain."

—*Before N. Y. Bar Ass'n., Jan. 14, 1916.*



## DEMOCRATIC PLATFORMS

"If you go through the Democratic platforms for the last 50 years, you will feel as though you were walking through a cemetery consecrated to departed Constitutional theories."

## POWER

"I do not covet power; power means responsibility. I do covet honors; I have enjoyed great honors. I simply desire to serve the American people."—*Said when candidate for the Presidency, 1916.*

## EXPERT AGENTS OF DEMOCRACY

"A tendency opposed to a proper conception of the function of the courts is that which denies to judges the authority which would seem to be needed for the efficient discharge of judicial duty. Thus in some jurisdictions the freedom of the judge in instructing the jury is very considerably curtailed in a manner which betrays a regrettable distrust. This of course, carries the lesson of the extreme importance of such conduct on the part of our judges as will commend their office to the community they serve. But I venture to say that no intelligent citizen has ever taken part as a jurymen in a trial, over which presided a thoroughly competent judge, who swiftly, fairly, and firmly applied the law, extricating the essential merits of the controversy from the confusing details of testimony and argument, without profound respect for the expert knowledge, and trained capacity which successfully meets a test so severe. There can be no respect for the law, without competent administration, and there can be no competent administration without adequate power. We shall never rise to our opportunities in this country and secure a proper discharge of the public business until we get over our dislike of experts; and the difficulties in the way of needed improvements in the administration of justice will not be overcome by tying the hands of the most competent to deal with them."

—*From Address before N. Y. Bar Ass'n., 1916.*

## OFFICIAL RESPONSIBILITY

"To put upon the courts the burden of considering the details of administrative problems would be to overwhelm them; but for the courts to revise and rescind administrative agencies, but also to seriously impair the confidence reposed in judicial tribunals. It cannot be too strongly insisted that if we are to have these important administrative instrumentalities properly perform their duty, they should stand on their own footing, and that the public should realize that their safeguard is not in injecting the courts into the work of administration, to the confusion of both, but in maintaining an enlightened policy and in insisting upon proper standards of official conduct. The courts cannot be substituted for administrative agencies; nor, as I believe, is it to the ultimate advantage of the community to divide between them the responsibility for purely administrative action. This is not to say that the courts do not have a very important function in connection with the work of administrative commissions. These bodies exercise prescribed powers, and the limits of these powers, as well as constitutional restrictions, must be defended and maintained by judicial tribunals. There is thus interposed one of the most important safeguards of the community against all efforts on the part of administrative agents to draw to themselves powers not conferred, and on the other hand, the appropriate demand, intelligently enforced for the proper execution of the law, does not in any way



sacrifice administrative efficiency. Rather it tends to conserve such efficiency by avoiding the reactions which inevitably follow abuses of authority."—*From Address before N. Y. Bar Ass'n., 1916.*

### FEDERAL COURT CAN REVIEW STATE COURT, AS TO ITS FACTS, WHEN WRONG

The argument of the appellee, Frank vs. Mangum, in habeas corpus, coming up from the U. S. District Court for the Northern District of Georgia, in substance is that the trial was in a court of competent jurisdiction, and it retains jurisdiction, although in fact, it was dominated by a mob, and that the rulings of the State Court as to the fact of such domination cannot be reviewed. This was the majority opinion. The dissenting opinion in part is here set forth, rendered by Justices Holmes and Hughes:

"But the argument seems to us conclusive. Whatever disagreement there may be as to the scope of the phrase 'due process of law,' there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard. Mob law does not become due process of law by securing assent of a terrorized jury. We are not speaking of mere disorder, or mere irregularities in procedure, but a case where the processes of justice are actually subverted. In such a case, the Federal Court has jurisdiction to issue the writ (habeas corpus). The fact that the State Court still has its general jurisdiction, and is otherwise a competent court does not make it impossible to find that a jury has been subjected to intimidation in a particular case. The loss of jurisdiction is not general but particular, and proceeds from the control of a hostile influence. When such a case is presented, it cannot be said, that the State Court decision makes the matter *res adjudicata*. \* \* \* To put an extreme case and show what we mean, if the trial and the later hearing before the Supreme Court had taken place in the presence of an armed force known to be ready to shoot if the result was not one desired, we do not suppose that this Court would allow itself to be silenced by the suggestion that the record showed no flaw. To go one step further, suppose that the trial had taken place under such intimidation and that the Supreme Court of the State on writ of error had discovered no error in the record, we still imagine that this Court would find a sufficient one outside of the record, and that it would not be disturbed in its conclusion by anything that the Supreme Court of the State might have said. We, therefore, lay the suggestion that the Supreme Court of the State has disposed of the present question of the appellant's (Frank's) right to be present. If the petition discloses facts that amount to a loss of jurisdiction in the trial Court, jurisdiction could not be restored by any decision above. And, notwithstanding, the principle of comity and convenience (for in our opinion, it is nothing more, U. S. vs. Sing Tuck, 194 U. S., 161-8), that calls for a resort to the local appellate tribunal before coming to the Court of the U. S. for a writ of habeas corpus, when as here, that resort has been had in vain, the power to secure fundamental rights that had existed at every stage becomes a duty and must be set forth.

"The single question in our minds is, whether a petition alleging that a fair trial took place in the midst of a mob, savagely and manifestly intent on a single result, is shown on its face unwarranted by the specifications, which may be presumed to set forth the strongest indications of the fact at the petitioner's command. This is not a matter of polite presumptions; we must look facts in the face. Any judge who has sat with juries knows that, in spite of forms, they are extremely likely to be impregnated by the envioning atmosphere. And when we find the judgment of the expert on the spot, of the judge whose business it was to preserve, not only form but substance, to have been that, if one



jurymen yielded to the reasonable doubt of a most anxious deliberation, neither prisoner nor counsel would be safe from the rage of the crowd, we think the presumption overwhelming that the jury responded to the passions of the mob. Of course we are speaking only of the case made by the petition, and whether it ought to be heard. Upon allegations of this gravity, in our opinion, it ought to be heard, whatever the decision of the State Court may have been, and it did not need to set forth contradictory evidence, or matter of rebuttal, or to explain why the motions for a new trial and to set aside the verdict, were overruled by the State Court.

"There is no reason to fear an impairment of the authority of the State to punish the guilty. We do not think it impracticable in any part of this country to have trials from outside control. But to maintain this immunity it may be necessary that the supremacy of the law and the Federal Constitution should be vindicated in a case like this. It may be that on a hearing, a different complexion would be given to the judge's alleged facts to be true, we are of opinion that if they were before the Supreme Court it sanctioned a situation upon which the Courts of the U. S. should act, if for any reason they were not before the Supreme Court, it is our duty to act upon them now, and to declare lynch law as little valid when practiced by a regularly drawn jury, as when administered by one elected by a mob, intent on death."

—Justice Hughes's dissenting opinion in *Frank vs. Magnum*, 237 U. S. Rep., 309.

The majority Court upheld the refusal of a writ of habeas corpus, brought by Frank, found guilty of murder in the State Courts, and the U. S. District Court, for the Northern District of Georgia, refused to hear and try the writ of habeas corpus, made in behalf of Leo M. Frank, a former resident of N. Y. City, convicted in the Georgia State Courts of the murder of a girl of tender years, employed in an Atlanta pencil factory, of which he was superintendent.

#### WIFE, UNDER MARRIED WOMAN ACT, CAN SUE HER HUSBAND IN TORT, DISSENTING OPINION

Justice Hughes concurred with Justices Harlan and Holmes, in a dissenting opinion to the effect that a married woman could sue her husband in damages for an assault and battery committed by him against her. This was whether the District of Columbia, under a statute, passed by Congress, in 1901, empowering a married woman, not only to sue others in her own right for redress of wrongs done her person, or her property, but also to maintain an action against the man to whom she was still joined in marital bond, to recover damages for an assault and battery committed by him against her. She charged that she had been brutally beaten on seven different days, separated in point of time. On four of these occasions, she said she was enciente, and that her husband knew it when he added force to wrath against her. She asked \$70,000 damages; sued in her own name and in her own right. The D. C. Courts ruled that she could not sue at all, and her attorneys carried the matter to the Supreme Court, the Court of final appeal from the District of Columbia, and Justice Hughes felt compelled to register his earnest dissent. The statute is as follows:

"Married women shall have the power to engage in any business, to contract, whether engaged in business or not, and to sue separately upon this contract, and also to sue separately for the recovery, security or protection of their property, and for torts committed against them, as fully and freely as if they were unmarried."

The dissenting opinion, read by Justice Harlan, in part is as follows, was concurred in by Justices Hughes and Holmes:

"In my opinion these statutory provisions, properly construed, embrace such a case as the present one. If the words used by Congress lead to such a result, and if, as suggested, that result be undesirable on grounds



of public policy, it is not within the functions of the Court to ward off the dangers feared, or the evils threatened simply by a judicial construction that will defeat the plainly expressed will of the legislative department. With the mere policy, expediency, or justice of legislation, the courts in our system of government have no rightful concern. Their duty is only to declare what the law is, not what, in their judgment, it ought to be, leaving the responsibility for legislation where it exclusively belongs, that is, with the legislative department, so long as it keeps within constitutional limits. Now, there is not here, as I think, any room whatever for mere construction, so explicit are the words of Congress. Let us follow the clauses of the statute in their order. The statute enables the married woman to take, as her own, property of any kind, no matter how acquired by her, as well as the avails of her skill, labor, or personal exertions, 'as absolutely as if she were unmarried.' It then confers upon married women the power to engage in any business, no matter what, and to enter into contracts, whether engaged in business or not, and to sue separately upon these contracts. If the statute stopped here, there would be ground for holding that it did not authorize this suit. But the statute goes further. It proceeds to authorize married women also to sue separately for the recovery, security and protection of their property; still more, they may sue separately 'for torts committed against them as fully and freely as if they were unmarried.' No discrimination is made, in either case, between the persons charged with committing the tort. No exception is made in reference to the husband, if he happens to be the party charged with transgressing the rights conferred upon the wife by the statute. In other words, Congress by these statutory provisions, destroys the unity of the marriage association as it had previously existed. It makes a radical change in the relations of man and wife, as those relations were at common law in this District. In respect of business and property the married woman is given absolute control; in respect of the recovery and protection of her property, she may sue, separately, in tort, as if she was unmarried; and in respect of herself, that is, of her person, she may sue, as fully and freely as if she were unmarried, 'for torts committed against her.' So the statute expressly reads.

"But, my brethren think that notwithstanding the destruction of the unity of the married relation, it could not have been intended to open the doors of the courts to accusations of all sorts by husband and wife against each other; and, therefore, they are moved to add, by construction, to the provision that married women may 'sue separately \* \* \* for torts committed against them as fully and freely as if they were unmarried' these words: 'Provided, however, that the wife shall *not* be entitled in any case, to sue her husband for a tort committed *against her person*.' If the husband violently takes possession of his wife's property and withholds it from her she may, *under the statute*, sue him, separately, for damages. That action would also be one in tort. If these propositions are disputed, what becomes of the words in the statute to the effect that she may 'sue separately for the recovery, security and protection' of her property? But if they are conceded, as I think they must be, then Congress, under the construction now placed by the Court in the statute, is put in the anomalous position of allowing a married woman to sue her husband separately, in tort, for the recovery of her property, but denying her the right or privilege to sue him separately, in tort, for damages arising from the brutal assaults upon her person. I will not assume that Congress intended to bring about any such result. I cannot believe that it intended to permit the wife to sue the husband separately, in tort, for the recovery, including damages, for the detention of her property, and at the same time denying her the right to sue him, separately, for a tort committed against her person."

—*Thompson v. Thompson*, 218 U. S. 611.



## IMPRISONMENT FOR DEBT

In *Bailey v. Alabama*, 219 U. S., 219, decided in Jan., 1911, the judgment of the Alabama Supreme Court, affirming a judgment of conviction in the Montgomery City Court, was reversed. The case was decided by Justice Hughes, White, Ch. J., and Harlan, McKenna and Day, J., concurring; Holmes, J., writing, and Lurton, J., concurring in dissent. It was held, in substance, that while its immediate concern was African slavery, the 13th Amendment was a charter of universal civil freedom for all persons of whatever race, color or estate under the flag; the constitutional prohibition against all control by coercion of the personal service of one man for the benefit of another, cannot be transgressed indirectly, by creating a statutory enactment; and a State cannot compel 'involuntary servitude' in carrying out contracts of personal service by making non-performance presumptive evidence of guilt of intent to defraud. Justice Hughes saying:

"The act of Congress, nullifying all State laws by which it should be attempted to enforce the 'service of labor of any persons or peons, in liquidation of any debt or obligation, or otherwise,' necessarily embraces all legislation which seeks to compel the service of labor by making it a means to refuse or fail to perform it. Such laws would furnish the readiest means of compulsion. The 13th Amendment prohibits involuntary servitude, except as punishment for crime. But the exception, allowing full latitude for the enforcement of penal laws, does not destroy the prohibition. It does not permit slavery or involuntary servitude to be established or maintained through the operation of the criminal law, by making it a crime to submit to the one, or to render the service which would constitute the other. The State may impose involuntary servitude as a punishment for crime, but it may not compel one man to labor for another, in payment of a debt, by punishing him as a criminal, if he does not perform the service, or pay the debt.

"If the statute in this case had authorized the employing company to seize the debtor, and hold him to the service until he paid the \$15.00, or had furnished the equivalent in labor, its invalidity would not be questioned. It would be equally clear that the State could not authorize the constabulary to prevent the servant from escaping and to force him to work out his debt. But the State could not avail itself of the sanction of the criminal law to supply the compulsion any more than it could use or authorize the use of physical force. 'In contemplation of the law the compulsion of such service, by the fear of punishment under a criminal statute is more powerful than any guard which the employer could station.'

"What the State may not do directly, it may not do indirectly. If it cannot punish the servant as a criminal for the mere failure or refusal to serve without paying his debt it is not permitted to accomplish the same result by creating a statutory compulsion which upon proof of no other fact exposes him to conviction and punishment. Without imputing any actual motive to oppress, we must consider the natural operation of the statute here in question, and it is apparent that it furnishes a convenient instrument for the coercion which the Constitution and the Act of Congress forbid; an instrument of compulsion peculiarly effective as against the poor and the ignorant, its most likely victims. There is no more important concern than to safeguard the freedom of labor, upon which alone, can enduring prosperity be based. The provisions designed to secure it would soon become a barren form, if it were possible to establish a statutory presumption of this sort, and to hold over the heads of the laborers the threat of punishment for crime, under the name of fraud, but merely upon evidence of failure to work out their debts. The Act of Congress deprives of effect all legislative measures of any State through which, directly or indirectly, the prohibited thing, to-wit, com-



pulsory service to secure the payment of a debt, may be established or maintained, and we conclude that Section 4730, as amended, of the Code of Alabama, in so far as it makes the refusal or failure to perform the act or service, without refunding the money or paying for the property received, prima facie evidence of the commission of the crime which the section defines, is in conflict with the 13th Amendment, and the legislation authorized by that Amendment, and is, therefore, invalid."

### SKETCH OF HUGHES

Charles E. Hughes, before becoming Governor of New York, had been a practicing lawyer in N. Y. City since 1884 with the exception of two years (1891-3), when he was Professor in Cornell College of Law, at Ithaca. His professional eminence had received public recognition through his services in 1905-6, as counsel to the special investigating bodies of the N. Y. Legislature, known as the Stevens Gas and Electric Lighting Committee, and the Armstrong Life Insurance Investigating Committee. In 1906, he had been designated as one of the special counsel of the U. S. Department of Justice to initiate steps for the prosecution of the so-called violations of the coal-owning and coal-carrying railroads, of the Anti-Trust, and Anti-Rebate laws. His judicial career began Oct. 10, 1910, and ended June 10, 1916, upon his resignation as Supreme Court Judge of the United States, to which he had been appointed by President Taft, succeeding Justice Brewer. During his nearly six years of service he wrote the majority opinions, in 151 cases, and dissents in 30 cases, or 181 opinions. He showed great independence of mind and his statesmanship therein, as well related in a work by William L. Ransom, of the N. Y. City Bar, issued in October, 1916, 281 pp., entitled, 'Charles E. Hughes, the Statesman as Shown in the Opinions of the Jurist,' reminding one of the observation of Jos. P. Cotton, Jr., in his 'Constitutional Decisions of John Marshall,' in which he says: "Save Washington, Hamilton and Lincoln, no American stands higher (than Marshall) as a constructive statesman in the work of evolution of the Union, and it is peculiarly of his work of statesmanship that practically without exception all of it found expression in the course of judicial opinions as Chief Justice."—*The Author*.

Mr. Hughes ran for President of the U. S. in 1916, but was defeated by Woodrow Wilson. He is now the premier of the American Government, as Secretary of State, under President Harding and a very efficient executive officer.—*Author*.

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### BENJAMIN FRANKLIN

"Of him may be said, perhaps, with as much propriety as of any other man, that he never said a word too soon, nor a word too late, nor a word too much."—*John Bigelow*.



## WILLIAM T. HUGHES, Illinois

### BACON AND COKE COMPARED

"Was Bacon or Coke the greatest lawyer?"

"Bacon published as guide posts to the law twenty-five maxims which may be called his beacon lights, or his datum posts. He left 300 maxims unpublished, and a digest plan to facilitate finding and learning the law. Evidently he believed that the law could be taught from a few fundamental principles. He thought that twenty-five maxims, made conspicuous and well impressed, might be viewed as the grain of mustard, or as the leaven of the loaf in the parables. He saw that the highest efforts of teaching are wonderfully condensed, and that the active legal mind can deduce much from the proverb that contains within itself the condensed good sense of nations. The sense being there, it may be best brought out by thought, not by slavishly following decision and dictum. From the data we possess, it thus seems fair to conclude that Bacon viewed the law as of Roman origin. His maxims, not only those above mentioned, but also those relating to the Court of Chancery, support this view. He was a philosopher, and certainly knew the sprouts that would spring from the roots of the law, but evidently included a digest as well, in which the sprouts, or cases, growing out of the maxims, were to be classified under appropriate maxim heads. Thus the lawyer, knowing the principle or maxim upon which his case rested, could, after reading the text, follow the discussion into the digest of cases flowing from the principle under review. To Bacon, the maxim was a ray of reason, a beacon light that safeguards and guides the way. With him who knows a few well selected maxims, there can be no juggling with jurisprudence. \* \* \*

"Bacon believed in great, high laws of morals, reason, logic and justice; that arbitrary edicts contrary to fundamental law are *ab initio* void. He believed in a supreme law to which all must yield obedience or atone for the consequences. He believed that the supreme law is reducible to a few well-worn maxims, which, when understood are seen to be a touchstone to the solution of legal problems. He believed, in other words, that these fundamental principles are *in the law* and not a thing apart from it; that they are practical and workable principles, and necessarily must be so. The grasp of the science of the law places him in the most honored niche of the Pantheon of Philosophy. He rises above Aristotle and Cicero, illumined sons of Greece and Rome. None are to be mentioned with him. \* \* \*

"Coke, on the other hand, published his Institutes, a digest of the Common Law, and the profession, following his lead, buried themselves in it, and have remained buried to the present day. They are drudges in treadmills. Let the lawyer look around him at our mass of digests and encyclopedias, each boasting its tens and hundreds of thousands of precedents; let him consider the increasing volume of our reports, burdened with opinions led astray by these irreconcilable precedents. \* \* \* Coke believed in the supremacy of the Common Law as an indigenous English product. Believed not in the omnipotence even of Parliament, but his resistance to that body seems to have come from dictates of his aggressive nature in asserting the dignity of his own bench. He felt that Englishmen, by reason of something peculiar in their Common Law, were entitled to the rights for which they had fought and died, and in their possession of which he gloried. \* \* \*

"Coke was a man of precedents; Bacon was a man of principle. Coke was a laborer. Bacon was a thinker. Coke made of the lawyer a drudge in the treadmill, hunting Case Law, drivel for drudges, while Bacon



saw the law, as a spirit. Coke was eternally delving to find out what the judges had said; Bacon studied the maxims of the Civil Law, to which no citation need be attached, but which take possession of the human mind by their own inherent dynamic force.

"There, as we say, lay the parting of the ways. Bacon, after successfully establishing the supremacy of the principles of the Civil Law over those of the Common Law, died under his accumulating sorrows before he could publish his manuscript on the maxims, from which as the fountain head he deduced the rules of law. To the misfortune of the world, he left its jurisprudence—its very foundation stone—unfinished and unplaced. Unable to furnish his manuscript himself, he begged the king to grant him the means. Coke was rich (his first wife brought him \$150,000 and left it to him at her death) and could have helped him, but he sought no such altruistic distinction. The king refused, Bacon died; the manuscripts were lost and we have but the maxims at most which he possibly gathered. Now at what day since has not the maxim work seen the greatest juridical light? This is a significant question, from a consideration of which appears the grandeur of Bacon."

—*In Grounds and Rudiments of the Law.*

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## LAUGHTER

"No man who has once heartily laughed can be altogether irreclaimably bad. How much lies in laughter; the cipher-key, wherewith we decipher the whole man! Some men wear an everlasting barren simper; in the smile of others lies a cold glitter of ice; the fewest are able to laugh, what can be called laughing, but only sniff and titter and snigger from the throat outwards; or at best, produce some whiffing, husky cachinnation, as if they were laughing through wool; of none such comes good. The man who cannot laugh, is not only fit for treason, stratagem and spoils, but his whole life is already a treason and a stratagem."—*Thos. Carlyle.*

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## BARRISTERS AND SOLICITORS

"Legal practitioners in the English courts are divided into two principal leasses, called barristers and solicitors. The barrister, who must be called to the bar or licensed by one of the four ancient Inns of Court, alone has the right to act as an advocate in the various branches of the high court. The solicitor, or attorney-at-law, is not a member of the bar, but he is the lawyer of record for the plaintiff or defendant, and he alone has the legal right to institute and manage proceedings at law. Otherwise stated, the solicitor is what we call an office lawyer, while the barrister does the work allotted by us to trial counsel."

—*Hyacinthe Ringrose, in 'Case and Comment.'*



EDWARD HYDE, EARL OF CLARENDON (1609 1674), England

## SAYINGS OF LORD CLARENDON

### INDUSTRY

"There is no art or science that is too difficult for industry to attain to; it is the gift of tongues, and makes a man understood and valued in all countries and by all nations; it is the philosopher's stone, that turns all metals, and even stones, into gold, and suffers no want to break into its dwellings; it is the northwest passage, that brings the merchant's ships as soon to him as he can desire; in a word, it conquers all enemies, and makes fortune itself pay contribution."

### BOOKS

"He that loves not books before he comes to thirty years of age, will hardly love them enough afterwards to understand them."

### CONVERSATION

"Counsel and conversation are a second education, which improve all the virtue, and correct all the vice of the first, and of nature itself."

### INSIGNIFICANCE

"No man is so insignificant as to be sure his example can do no hurt."

### FEAST

"It is not the quality of the meat, but the cheerfulness of the guests, which makes the feast."

### DISCRETION

"Because discretion is always predominant in true friendship, it works and prevails least upon fools. Wicked men are often reformed by it, weak men seldom."

### FRIENDSHIP

"Friendship hath the skill and observation of the best physician, the diligence and vigilance of the best nurse, and the tenderness and patience of the best mother."

### LAW AND LIBERTY

"The law is the standard and guardian of our liberty; it circumscribes and defends it; but to imagine liberty without a law, is to imagine every man with his sword in his hand to destroy him, who is weaker than himself; and that would be no pleasant prospect to those who cry out most for liberty."

### LIFE

"If we do not weigh and consider to what end this life is given us, and thereupon order and dispose it right, we do not number our days in the narrowest and most limited signification."



## PRIDE

"Pride, as is compounded of the vanity and ill nature that dispose men to admire themselves, and condemn other men, retains its vigor longer than any other vice, and rarely expires but with life itself. Without the sovereign influence of God's grace, men very rarely put off all the trappings of their pride till they who are about them put on their winding-sheet."

## CONTEMPT OF OTHERS

"The disesteem and contempt of others is inseparable from pride. It is hardly possible to overvalue ourselves by undervaluing our neighbors."

## IDLENESS

"At the last great day it will probably appear that the very idle man, who hath never employed himself, may be in little better condition than he who hath been worst employed; then idleness shall be declared to be a species of wickedness, and doing nothing to be the activity of a beast."

## ANGER

"Anger is the most important passion that accompanies the mind of man. It effects nothing it goes about, and it hurts the man who is possessed by it more than any other against whom it is directed."

## TIME

"The laboring man and the artificer knows what every hour of his time is worth, and parts not with it but for the full value; they are only noblemen and gentlemen, who would know best how to use it, that think it only fit to be cast away; and their not knowing how to set a true value upon this, is the true cause of the wrong estimate they make of all other things."

## WAR

"We cannot make a more lively representation and emblem to ourselves of hell, than by the view of a kingdom at war."

## WEAKNESS

"Few men have done more harm than those who have been thought to be able to do the least; and there cannot be a greater error than to believe a man whom we see qualified with too mean parts to do good, to be, therefore, incapable of doing hurt. There is a supply of malice, of pride of industry, and even of folly, in the weakest, when he sets his heart upon it, that makes a strange progress in wickedness."

## WORLDLINESS

"God hath not taken all that pains in forming, framing, furnishing, and adorning this world, that they who were made by Him to live in it, should despise it; it will be well enough if they do not love it so immoderately as to prefer it before Him who made it."

Clarendon, as a chancellor made no great impression in the court of Chancery. His early legal training had long been interrupted and his political preoccupations probably rendered necessary the delegation of



many of his judicial duties to others. He was noted as an historian and statesman. He built a home in London, known as Clarendon House, or Dunkirk House, which cost \$250,000, and was one of the finest residences in England. It was filled with the finest library ever collected in Great Britain, and contained a picture gallery of the chefs-d'oeuvre of the best master; and also a fine country home at Cornbury, at Oxfordshire, where he exercised hospitality on a grand scale during the long vacations. He rose to his office through his literary and oratorical gifts. His correspondence, amounting to over 100 volumes, is in the Bodelian Library at Oxford. His History of the Rebellion is in 15 volumes. He was banished by an act of Parliament, and passed the last six years of his life in exile in France. There was really nothing in the charge of treason against him, largely instigated by Charles II., who had turned against him. Considered the law—"That great and admirable system."

Southey calls him, "The wisest, most upright of statesmen," and George Brodie, "A miserable sycophant and canting hypocrite."

The truth lies between these two estimates; but Southey's is much the truer one.—*Author.*

## METHODS OF READING

When Mr. Gladstone read a book, he did so pencil in hand, marking on the margin those passages which he wished to remember, querying those of which he was in doubt and putting a cross opposite those which he disputed. At the end of the volume he constructed an index of his own, which enabled him to refer to those things he wished to remember. Darwin records a meeting with Buckle and "was very glad to learn from him his system of collecting facts. He told me that he bought all the books which he read and made a full index to each of the facts which he thought might prove serviceable to him, and that he could always remember in what book he had read anything, for his memory was wonderful. I asked him how at first he could judge what facts would be serviceable and he answered that he did not know, but that a sort of an instinct guided him. From this habit of making indices he was enabled to give the astonishing number of references on all sorts of subjects which may be found in his 'History of Civilization.' "

Darwin's own method, as described by his son, was not very dissimilar. "In each book as he read it, he marked passages bearing on his work. In reading a book or pamphlet he made pencil lines at the side of the page, often adding short remarks, and at the end made a list of the pages marked. When it was catalogued and put away, the marked pages were looked at, and so a rough abstract of the book was made."—*The Author.*



## JOHN J. INGALLS (1833-1900), Kansas

### OPPORTUNITY

"Master of human destinies am I!  
Fame, love and fortune on my footsteps wait.  
Cities and fields I walk; I penetrate  
Deserts and seas remote, and passing by  
Hovel and mart and palace, soon or late  
I knock unbidden once at every gate!  
If sleeping, wake; if feasting, rise before  
I turn away. It is the hour of fate,  
And they who follow me reach every state  
Mortals desire, and conquer every foe  
Save death; but those who doubt or hesitate,  
Condemned to failure, penury and woe,  
Seek me in vain and uselessly implore.  
I answer not, and I return no more!"

—*John J. Ingalls.*

### PENNSYLVANIA'S GREAT MEN

"Mr. President, Pennsylvania has produced but two great men; Benjamin Franklin, of Massachusetts, and Albert Gallatin, of Switzerland."

—*John J. Ingalls to a Penn. Senator, who had made an attack on Kansas, in the United States Senate.*

### THE STATE OF DELAWARE

"And, Mr. President, this is the State (Kansas) that has been assailed in the chamber by a man who represents in part—in part, Mr. President—a State which has two counties when the tide is up and three when the tide is down."

—*John J. Ingalls in reply to Senator Salisbury, of Delaware, who had attacked Kansas, in the U. S. Senate.*

It was said of Ingalls that "Nobody who knew him ever walked carelessly or insolently on his preserves without regretting it." As he was an emperor in the realm of expression, and had three text-books: nature, humanity, and the dictionary. The late Chas. B. Reed, of Kansas City, Mo., said he lived neighbors to Ingalls in Atchison, Kansas, and when asked by his brother Frank, how he was able to use just the right word, Ingalls replied: "Well, I am able to use the best word when and where needed, because I have studied the dictionary an hour a day for the last 15 years."

### GRASS

"Next in importance to the divine profusion of water, light and air, those three physical facts which rendered existence possible, may be reckoned the universal benefits of grass. Living in the sunshine among buttercups and dandelions of May, scarcely higher in intelligence than the minute tenants of the mimic wilderness, our earliest recollections are of grass, and when the fitful fever is ended, and the foolish wrangle of the market and forum is closed, grass heals over the scar which our descent into the bosom of the earth made, and the carpet of the infant becomes the blanket of the dead. Grass is the forgiveness of Nature—her constant benediction. Fields trampled with battle, saturated with blood, torn with the rust of cannon, grow green again with grass and carnage is forgotten.



Streets abandoned by traffic become grass-grown like rural lanes and are obliterated. Forests decay and harvests perish, flowers vanish, but grass is immortal; beleagured by sullen hosts of winter, it withdraws into the impregnable fortress of its subterranean vitality and emerges upon the first solicitation of spring.

"Sown by the winds, by wandering birds, propagated by the subtle horticulture of the elements, which are its ministers and servants, it softens the rude outline of the world. It invades the solitudes of deserts, climbs the inaccessible slopes and forbidding pinnacles of mountains, modifies climates and determines the history, character and destiny of nations. Unobtrusive and patient, it has immortal vigor and aggression. Banished from the thoroughfare and field, it bides its time to return, and when vigilance is relaxed, or the dynasty has perished, it silently resumes the throne from which it has been expelled, but which it never abdicates.

"It bears no blazonry of bloom to charm the senses with fragrance of splendor, but its homely hue is more enchanting than the lily or the rose. It yields no fruit in earth or air, yet should its harvest fail for a single year, famine would depopulate the world."—*John J. Ingalls.*

#### IMMORTALITY—EULOGY ON BEN HILL

"Ben Hill has gone to the undiscovered country. Whether his journey thither was but one step across an imperceptible frontier, or whether an interminable ocean, black, unfluctuating and voiceless, stretches between these earthly coasts and those invisible shores, we do not know. Whether on that August morning after death he saw a more glorious sun rise with unimaginable splendor above a celestial horizon, or whether his apathetic and unconscious ashes still sleep in cold obstruction and insensible oblivion, we do not know. Whether his strong, but subtle energies found instant exercise in another forum; whether his dexterous and disciplined faculties are now contending in a higher Senate than ours for supremacy, or whether his powers were dissipated and dispersed with his parting breath, we do not know. Whether his passions, ambitions and affections still sway, attract and impel; whether he yet remembers us as we remember him, we do not know.

"These are the unsolved and insoluble problems of mortal life and human destiny, which prompted the troubled patriarch to ask that momentous question, for which the ages have given no answer. 'If a man die, shall he live again?'. Every man is the center of a circle whose fatal circumference he cannot pass. Within its narrow confines he is potential; beyond it he perishes, and if immortality is a splendid but delusive dream; if the incompleteness of every career, even the longest and most fortunate, be not supplemented and perfected after its termination here, then he who dreads to die should fear to live, for life is a tragedy more desolate and inexplicable than death."

—*John J. Ingalls' Eulogy in U. S. Senate, on the death of Ben Hill.*

#### HAPPINESS

"Happiness is an endowment, and not an acquisition. It depends more upon temperament and disposition than environment. It is a state or condition of the mind, and not a commodity to be bought or sold in the market. A beggar may be happier in his rags than a king in his purple. Poverty is no more incompatible with happiness than wealth, and the inquiry, 'how to be happy though poor,' implies a want of understanding of the conditions upon which happiness depends. Dives was not happy because he was a millionaire, nor Lazarus wretched because he was a pauper. There is a quality in the soul of man that is superior to circumstances and that defies calamity and misfortune. The man who is un-



happy when he is poor would be unhappy if he were rich, and he who is happy in a palace in Paris would be happy in a dugout on the frontier of Dakota. There are as many unhappy rich men as there are unhappy poor men. Every heart knows its own bitterness and its own joy. Not that wealth and what it brings is not desirable—books, travel, leisure, comfort, the best food and raiment, agreeable companionship—but all these do not necessarily bring happiness and may coexist with the deepest wretchedness, while adversity and penury, exile and privation are not incompatible with the loftiest exaltation of the soul.

“ ‘More true joy Marcellus exiled feels,  
Than Caesar with a Senate at his heels.’ ”  
—*John J. Ingalls.*

KANSAS: “Kansas is the navel of the nation. Diagonals drawn from Duluth to Galveston, from Washington to San Francisco, from Tallahassee to Olympia, from Sacramento to Augusta, intersect it in its center.”  
—*John J. Ingalls.*

### WICKEDNESS

“The world has no more conspicuous illustration of the truth that nothing is so unprofitable as wickedness. The thief robs himself. The adulterer pollutes himself, than that which kills the victim. Behind every criminal in the universe silent but relentless stands with uplifted blade, the shadow of vengeance and retribution. The Bible has it: ‘The wages of sin is death.’ ”

### THE DEMOCRATIC PARTY

“The Democratic party, having neither conscience, convictions nor defined principles, inevitably allies itself with discontent, and is arrayed against social order. It is strongest where public and private morality is weakest. Its citadels are the South, where society is distinctly feudal, and in the great cities, where the ignorant and criminal elements are most energetic. It has no beliefs, maxims or formulas. Its creed is the instruction of Jefferson—that in a popular government wealth, intelligence and morality are ultimately no match for numbers. For twenty-five years its only policy has been to complain to oppose, to deny, to protest and ultimately to acquiesce. So when Cleveland came in, being without plans, purpose, or policy, his administration floundered pitiably both in domestic and foreign affairs, was contemptible in many things and feeble in all, and left absolutely no impression whatever upon history except the matter of vetoing bills for pensions and public buildings. It followed Republican methods and carried on Republican ideas, so that when Harrison was inaugurated, it was as if a stitch had been dropped merely, and we have kept right along with our work.”—*From an interview.*

### THE RACE TO WHICH WE BELONG

“The race to which we belong is the most arrogant and rapacious, the most exclusive and indomitable in history. It is the conquering and the unconquerable race, through which alone man has taken possession of the physical and moral world. To our race humanity is indebted for religion, for literature, for jurisprudence and for administration. The home and the family are its contributions to society. Individualism, fraternity, liberty and equality have been its contributions to the state. All other races have been its enemies or its victims.”

—*Speech in U. S. Senate, Jan. 23, 1890; ‘To Provide for Persons of Color to Emigrate from the Southern States.’*



## ROBERT G. INGERSOLL (1833-1899), Illinois

### MINORITY

"Are majorities always right? If the minority had never spoken, what today would have been the condition of the world? Are the majority the pioneers of progress, or does the pioneer, as a rule, walk alone? Is it his duty to close his lips? Must the inventor allow his inventions to die in the brain? Must the discoverer of new truths make his mind a tomb? Is man under any obligation to his fellows? Was the Episcopal religion always in the majority? Was it at any time in the history of the world an unpleasant thing to be called a Protestant? Was Luther a misfortune to the human race?"

—*R. G. Ingersoll, N. A. Review, Apr., '89, p. 409.*

### NAPOLEON, LOVE VS. GLORY

"A little while ago I stood by the grave of the old Napoleon—a magnificent tomb of gilt and gold, fit almost for a dead deity; and gazed upon the sarcophagus of black Egyptian marble, where rest at last the ashes of that restless man. I leaned over the balustrade, and thought about the career of the greatest soldier of the modern world. I saw him walking upon the banks of the Seine, contemplating suicide; I saw him at Toulon; I saw him putting down the mob in the streets of Paris; I saw him at the head of the army in Italy; I saw him crossing the bridge of Lodi, with the tri-color in his hand; I saw him in Egypt, in the shadows of the pyramids; I saw him conquer the Alps, and mingle the eagles of France with the eagles of the crags; I saw him at Marengo, at Ulm and Austerlitz; I saw him in Russia, where the infantry of the snow and the cavalry of the wild blast scattered his legions like winter's withered leaves. I saw him at Leipsic, in defeat and disaster; driven by a million bayonets back upon Paris; clutched like a wild beast; banished to Elba. I saw him escape, and retake an empire by the force of his genius. I saw him upon the frightful field of Waterloo, where Chance and Fate combined to wreck the fortunes of their former king. And I saw him at Helena, with his hands crossed behind him, gazing out upon the sad and solemn sea. I thought of the orphans and widows he had made, of the only woman who had ever loved him, pushed from his heart by the cold hand of ambition. And I said I would rather have been a French peasant, and worn wooden shoes; I would rather have lived in a hut, with a vine growing over the door, and the grapes growing purple in the kisses of the autumn sun. I would rather have been that poor peasant, with my loving wife by my side, knitting as the day died out of the sky, with my children upon my knees and their arms about me. I would rather have been that man, and gone down to the tongueless silence of the dreamless dust, than to have been that imperial impersonation of force and murder, known as Napoleon the Great."—*Robt. G. Ingersoll.*

### THE HOLIEST WORD IS WIFE

"The prosecution have asked you, gentlemen of the jury, not only to violate the law of the land, they have asked you to violate the law of nature. They have maligned mercy. They have laughed at mercy. They have trampled upon the holiest human ties, and they have even made light of the fact that a wife in this trial has sat by her husband's side. Think of it.

"There is a painting in the Louvre, a painting of desolation, of despair and love. It represents the night of the Crucifixion. The world is



represented in shadow. The stars are dead, and yet in the darkness is seen a kneeling form. It is Mary Magdalene with loving lips and hands pressed against the bleeding feet of Christ. The skies were never dark enough nor starless enough; the storm was never fierce enough nor wild enough; the quick bolts of heaven were never lurid enough, and the arrows of slanders never flew thick enough to drive a noble woman from her husband's side. And so it is in all of human speech, the *holiest word is WIFE.*"

—*In reply to Mr. Merrick in the first Star Route Trial, Defense of Stephen W. Dorsey.*

SHAKESPEARE: "Shakespeare was an intellectual ocean, whose waves touched all the shores of thought."

—*Written in a presentation copy of Shakespeare given the author.*

CREED: "Above all statutes rises the figure of Justice. I give to all others the rights I claim for myself, without regard to complexion or race."

—*Ingersoll.*

POWER: "Nothing discloses real character like the use of power. Most people can bear adversity; but if you wish to know what a man really is, give him power."—*From his lecture on Lincoln.*

LINCOLN: "He is the gentlest memory of our world."—*R. G. Ingersoll.*

### INGERSOLL'S CREED

"My creed is to love justice, to long for the right, to love mercy, to pity the suffering, to assist the weak, to forget wrongs and remember benefits, to utter honest words, to love liberty, to make relentless war against slavery in all its forms, to love wife and child and friend, to make a happy home, to love the beautiful in art, in Nature, to cultivate the mind, to be familiar with the mighty thoughts that genius has expressed, the noble deeds of all the world, to cultivate courage and cheerfulness, to make others happy, to fill life with the splendor of generous acts, to destroy prejudice, to receive new truths with gladness, to cultivate hope, to see the calm beyond the storm, the dawn before the night, to do the best that can be done and then, to be resigned."

### A TRIBUTE TO WOMAN

"It takes a hundred men to make an encampment, but one woman can make a home. I not only admire woman as the most beautiful object ever created, but I reverence her as the redeeming glory of humanity, the sanctuary of all the virtues, the pledge of all perfect qualities of head and heart. It is not just or right to lay the sins of men at the feet of woman. It is because women are much better than men that their faults are considered greater. A man's desire is the foundation of his love, but a woman's desire is born of her love. The one thing in this world that is constant, the one peak that rises above the clouds, the one window in which the light forever burns, the one star that darkness cannot quench, is woman's love. It rises to the greatest heights, it sinks to the lowest depths, it forgives the most cruel injuries. It is perennial of life, and grown in every climate. Neither coldness nor neglect, harshness nor cruelty can extinguish it. A woman's love is the perfume of the heart. This is the real love that subdues the earth; the love that has wrought miracles of art; that gives us music all the way from the cradle-song to the grand symphony that bears the soul away on wings of fire. 'A love that is greater than power, sweeter than life, and stronger than death.' "—*R. G. Ingersoll.*



## ORATORY

"Oratory is the same the world over. The man who thinks on his feet, who has the pose of passion, the face that thought illuminates, a voice in harmony with the ideas expressed, who has logic like a column and poetry like a vine, who transfigures the common, dresses the ideas of the people in purple and fine linen, who has the art of finding the best and noblest in his hearers, and who in a thousand ways creates the climate in which the best grows and flourishes and bursts into blossom—that man is an orator, no matter of what time or what country. \* \* \* I never heard any of the great English speakers, and consequently can pass no judgment as to their merits, except such as depends on reading. The finest paragraph ever uttered in Great Britain was by Curran in his defense of Rowan. Gladstone lacks logic. Bright was a great speaker, but lacked imagination and the creative faculty. Disraeli spoke to the clubs, and his speeches were artificial. We have had several fine speakers in America. Thomas Corwin stands at the top of the natural orators. He had more arrows in his quiver; had genius, humor, pathos, wit, and logic. He was an actor. His body talked. His meaning was in his lips and eyes. Sergeant S. Prentiss, the lawyer, was a very great talker, he threw his life away. Said profound and beautiful things, but lacked application; was uneven, disproportioned, saying ordinary things on great occasions, and the sublimest and most beautiful things, without the slightest provocation. Henry Ward Beecher was the greatest that the pulpit has produced. Theodore Parker was a great orator, preached great sermons; those on 'Old Age,' 'Webster,' and 'Liberty' were marvelously expressed, and when he spoke of human events, freedom, duty, the ideal mental integrity, he seemed inspired. In this country, however, probably Daniel Webster occupies the highest place in general esteem. He had great qualities; force, dignity, clearness, grandeur, but worshipped the past, kept his back to the sunrise, was not creative, no spirit of prophecy, lighted no torch not true to his ideal; yet he uttered a few great paragraphs, rich with thought, perfectly expressed."

—R. G. Ingersoll, in interview to *N. Y. Sun*, Apr., 1898.

## INGERSOLL'S COMMENT ON AUTHORS

"The greatest novelist, in my opinion, who has ever written in the English language, was Charles Dickens. He was the greatest observer since Shakespeare. He had the eyes that see, the ears that really hear. I place him above Thackeray. Dickens wrote for the home, for the great public, Thackeray wrote for the clubs. The greatest novel in our language, and it may be in any other—is, according to my idea, 'A Tale of Two Cities.' In that are philosophy, pathos, self-sacrifice, wit, humor, the grotesque and the tragic. I think it is the most artistic novel that I have read. The creations of Dickens' brain have become the citizens of the world. Emerson was a fine writer, and did the world a great deal of good, but I do not class him with the first. I think he was rather a poet than a philosopher. His doctrine of compensation would be delightful if it had the facts to support it. Hawthorne was a great writer, though his style is a little monotonous, the matter is good. 'The Marble Faun' is by far his best effort.

"Walt Whitman will hold a high place among American writers. His poem on the death of Lincoln, 'When Lilacs Last in the Dooryard Bloom'd,' is the greatest poem written on this continent.

"James Whitcomb Riley has written some of the daintiest and sweetest things in American literature. Edward Fawcett's 'Magic Flower' is as beautiful as anything Tennyson ever wrote. Eugene Field has written some charming things, natural and touching. Henry George wrote a wonderful book—one that arrested the attention of the world—one of



the greatest books of the century. While I do not believe in his destructive theories, I gladly pay a tribute to his sincerity and his genius."

—*From Interview with Ingersoll in Kansas City, Mo., May 26, 1882.*

## NOMINATING BLAINE FOR PRESIDENCY. JUNE 15, 1876

"The Republicans of the U. S. demand a man who knows prosperity and resumption, when they come, must come together; that when they come, they will come hand in hand, through the golden harvest fields; hand in hand past the open furnace doors; hand in hand by the flaming forges; hand in hand by the chimneys filled with eager fire, greeted and grasped by the countless sons of toil. This money has to be dug out of the earth. You cannot make it by passing resolutions in a political convention.

"The Republicans of the U. S. want a man who knows that this government should protect every citizen at home and abroad; who knows that any government that will not defend its defenders, and protect its protectors, is a disgrace to the map of the world. They demand a man who believes in eternal separation of church and school. They demand a man whose political reputation is spotless as a star; but they do not demand that their candidate shall have a certificate of moral character signed by a Confederate Congress. The man who has all, in full, heaped and rounded measure, all these splendid qualifications, is the present grand and gallant leader of the Republican party—James G. Blaine.

"Our country, crowned with the vast and marvelous achievements of its first century, asks for a man worthy of the past, and prophetic of the future; asks for a man who is the grandest combination of heart, conscience and brain beneath her flag—such a man is James G. Blaine. For the Republican host, led by this intrepid man, there can be no defeat. This is a great year—a year filled with recollections of the Revolution; filled with proud and tender memories of the past with the sacred legends of liberty—a year in which the sons of freedom will drink from the fountains of enthusiasm; a year in which the people call for the man who has preserved in Congress what our Soldiers won upon the field; a year in which they call for the man who has torn from the throat of treason the tongue of slander—for the man who has snatched from the mask of Democracy the hideous face of rebellion; for the man who, like an intellectual athlete, has stood in the arena of debate and challenged all comers, and who is still a total stranger to defeat. Like an armed warrior, like a plumed knight, James G. Blaine marched down the halls of the American Congress and threw his shining lance full and fair against the brazen foreheads of the defamers of his country and the maligners of its honor. For the Republican party to desert this gallant leader now is as though an army should desert their general upon the field of battle.

"James G. Blaine is now and has been for years the bearer of the sacred standard of the Republican party. I call it sacred because no human being can stand beneath its folds without becoming and remaining free.

"Gentlemen of the convention, in the name of the great Republic, the only republic that ever existed upon this earth; in the name of all the defenders and of all her supporters; in the name of all her soldiers living; in the name of her soldiers dead upon the field of battle, and in the name of those who perished in the skeleton clutch of famine at Andersonville and Libby, whose sufferings he so vividly remembers, Illinois—Illinois nominates for the next President of this Country, that prince of parliamentarians—that leader of leaders—James G. Blaine."

Ingersoll said in an interview at Indianapolis, Ind., Feb. 18, 1892, in reference to the history of this speech: "It was not born entirely of the occasion. It took me several years to put the thought in form



—to paint the pictures with words. No man can do his best on the instant. Iron to be beaten into perfect form has to be heated several times and turned upon the anvil many more, and hammered long and often. \* \* \* Now and then while a man is talking, heated with his subject, a great thought, sudden as a flash of lightning, illuminates the intellectual sky, and a great sentence clothed in words of purple, falls, or rather rushes from his lips—but a continuous flight is born, not only of enthusiasm but of long and careful thought."

### A WRONG DECISION, ALL MUST ACQUIESCE

"We must remember that it is one of the necessities of government that there should be a court of last resort; and while all courts will more or less fail to do justice, still, the wit of man, as yet, has devised no better way. Even after reading this decision (The Civil Rights case, of October, 1883), we must take it for granted that the judges of the Supreme Court arrived at their conclusions honestly and in accordance with the best light they had, while they had the right to render the decision, every citizen has the right to give his opinion as to whether that decision is good or bad. Knowing that they are liable to be mistaken, and honestly mistaken, we should always be charitable enough to admit that others may be mistaken, and we may also take another step, and admit that we may be mistaken about their being mistaken. We must remember, too, that we have to make judges out of men, and that by being made judges their prejudices are not diminished and their intelligence is not increased. No matter whether a man wears a crown or a robe or a rag. Under the emblem of power and the emblem of poverty, the man alike resides. The real thing is the man—the distinction often exists only in the clothes. Take away the crown—there is only a man. Remove the robe—there remains a man. Take away the rag, and we find at least a man."

—*Remarks of Ingersoll in discussing at Lincoln's Hall Washington, D. C., upon the decision of the U. S. Supreme Court pronouncing the Civil Rights Act Unconstitutional, Oct., 1883. 11 Works, 4.*

"Mr. Ingersoll is the most brilliant speaker of the English tongue of all men on this globe." Henry Ward Beecher, in introducing Col. Ingersoll to a Brooklyn audience, Oct. 30, 1880, in the Garfield campaign.

### CHILDHOOD'S LAUGHTER

"Strike with hand of fire, weird musician, thy harp, strung with Apollo's golden hair; fill the vast cathedral aisles with symphonies sweet and dim, deft toucher of the organ keys; blow, bugler, blow, until thy silver notes do touch the skies, with moonlit waves, and charm the lover's wandering on the vine-clad hills; but know your sweetest strains are discords all compared with childhood's happy laugh, the laughter that fills the eyes with light and every heart with joy; oh, rippling river of life, thou art the blessed boundary line between the beasts and man, and every wayward wave of thine doth drown some fiend of care; oh, laughter, divine daughter of joy, make dimples enough in the cheeks of the world to catch and hold and glorify all the tears of grief."

—*R. G. Ingersoll.*

### LOVE

"Love is the only thing in which the height of extravagance is the last degree of economy. If you have been emperor of the round world, and you have never loved and been loved, your life has been a failure."

—*R. G. Ingersoll.*



## SHAKESPEARE

"Shakespeare was the greatest genius of our world. He left us the greatest legacy of all the dead—the treasures of the greatest soul that ever lived and loved and wrought of words the statues, robes and gems of thought. \* \* \* In his writings there is no direct mention of any of his contemporaries. We do not know of any poet, author, soldier, sailor, statesman, priest, nobleman, king or queen that Shakespeare directly mentioned. \* \* \* In his time the actor was a vagabond, the dramatist a disreputable person, yet the greatest dramas were then written. In spite of law, and social ostracism, he reached the many-colored dome that fills and glorifies the intellectual heavens. \* \* \* The plays of Shakespeare show so much knowledge, thought and learning, that many people, those who imagine that universities furnish capacity, contend that Bacon must have been the author. We know Bacon. He was a scheming politician, a courtier, a time-server of church and kind, and a corrupt judge. He never admitted the truth of the Copernican system, was doubtful whether instruments were of any advantage in scientific investigation; was ignorant of the higher branches of mathematics; and as a matter of fact, he added but little to the knowledge of the world; said that there had not been since Christ, any king or monarch so learned in erudition, divine or human, as James I, a man whom Macaulay characterized as a 'stammering, slobbering, trembling coward, whose writings were deformed by the grossest and vilest superstitions, witches being the special objects of his fear, his hatred, and his persecution;' that instead of being the greatest philosopher of his time, his writings are filled with a strange mingling of foolishness and philosophy, was ignorant of the law of acceleration of falling bodies, although the law had been made known and printed by Galileo thirty years before Bacon wrote upon the subject; nor the principle of the lever; nor with the precession of the equinoxes; and was ill-read in those branches of learning in which, in his time, the most rapid progress has been made: that Bacon never claimed to be the author of the plays and sonnets attributed to Shakespeare, while the latter did. \* \* \* There were many dramatists before and during the time of Shakespeare, but they were only the foothills of that mighty peak, the top of which the clouds and mists still hide—Chapman and Marlowe, Heywood and Jonson, Webster, Beaumont and Fletcher.

"There are men, and many of them, who are always trying to show that somebody else chiseled the statue or painted the picture, that the poem is attributed to the wrong man, and that the battle was really won by a subordinate. Of course, Shakespeare made use of the works of others, and, we might say, of all others. The question is not, who furnished the stone, or who owned the quarry, but who chiseled the statue? Of all the poets, of all the writers, Shakespeare is the most original. He is as original as Nature. \* \* \* There is in the greatest poetry a kind of extravagance that touches the infinite, and in this, Shakespeare exceeds all others. \* \* \* He was an innovator, an iconoclast. Cared nothing for the authority of men, or of schools. Violated the 'unities,' and cared nothing for the models of the ancient world. \* \* \* The ordinary dramatists, the men of talent (and there is the same difference between talent and genius that there is between a stone-mason and a sculptor) create characters and become types. Types are of necessity caricatures, actual men and women are to some extent contradictory in their actions. In real people good and evil mingle. Types are all one way, or all the other. When I stood amid the great trees of California that lift their spreading capitals against the clouds, looking like Nature's columns to support the sky, I thought of the poetry of Shakespeare.



"What a procession of men and women, statesmen and warriors, kings and clowns, issued from Shakespeare's brain! What women!

ISABELLA, in whose spotless life love and reason blended into perfect truth;

JULIET, within whose heart passion and purity met like white and red within the bosom of a rose;

CORDELIA, who chose to suffer loss, rather than show her wealth of love with those gilded lies in hope of gain;

HERMIONE, 'tender as infancy and grace,' who bore with perfect hope and faith the cross of shame, and who at last forgave with all her heart;

DESDEMONA, so innocent, so perfect, her love so pure, that she was incapable of suspecting that another could suspect, and who with dying words sought to hide her lover's crime, and with her last faint breath uttered a loving lie that burst into a perfumed lily between her pallid lips;

PERDITA, 'a violet dim and sweeter than the lids of Juno's eyes,' 'The sweetest lowborn lass that ever ran on the greensward;'

MIRANDA, who told her love as gladly as a flower gives its bosom to the kisses of the sun, and

CORDELIA, whose kisses cured and whose tears restored. And stainless IMOGEN, who cried: 'What is it to be false?'

"Shakespeare has done more for women than all the other dramatists of the world. \* \* \*

"He was the greatest of philosophers. He knew the conditions of success, of happiness, the relations that men sustain to each other and the duties of all. He knew the weakness of the will, the sophistry of desire; that 'there is no darkness but ignorance.' \* \* \* In the realm of comparison, he seems to have exhausted the relations, parallels and similitudes of things. \* \* \* He was the master of definition. Thus he says,

OF THE DRAMA, 'Turning the accomplishments of many years into an hour-glass.'

OF DEATH, 'This sensible warm motion to become a kneaded clod, to lie in cold obstruction and to rot.'

OF MEMORY, 'The warder of the brain.'

OF THE BODY, 'This muddy vesture of decay.'

OF LIFE, 'Our little life is rounded with a sleep.'

OF AN ECHO, 'The babbling gossip of the air.'

OF THE WORLD, 'This bank and shoal of time.'

OF RUMOR, 'That it doubles, like the voice and echo.' \* \* \*

"There is in Shakespeare the mingling of laughter and tears, humor and pathos. Humor is the rose, with the thorn. Wit is crystallization, humor an efflorescence. Wit comes from the brain, humor from the heart. Wit is the lightning of the soul. \* \* \*

"Some have insisted that Shakespeare must have been a physician, as he shows such a knowledge of medicine, of the symptoms of disease and death, was so familiar with the brain and with insanity in all its forms. I do not think he was a physician. He knew too much, his generalizations were too splendid. He had none of the prejudices of his time. \* \* \* Nor do I believe he was a lawyer, a musician (though nearly every musical term known in his time, is to be found in 'The Two Gentlemen of Verona'), nor a scientist. He had the observant eyes that



really see, the ears that really hear, the brain that retains all pictures, all thoughts, logic as unerring as light, the imagination that supplies defects and builds the perfect from a fragment. And these faculties, these aptitudes, working together for what he did. He exceeded all the sons of men in the splendor of his imagination. To him the whole world paid tribute, and nature poured her treasures at his feet. In him all races lived again, and even those to be were pictured in his brain, having seen a leaf and a drop of water, he could construct the forests, the rivers and the seas, and in his presence the cataracts would fall and foam, the mists rise, the clouds form and float.

"Shakespeare was an intellectual ocean, whose waves touched all the shores of thought; within which were all the tides and waves of destiny and will; over which swept all the storms of fate; ambition and revenge; upon which fell the gloom and darkness of despair and death and all the sunlight of content and love, and within which was the inverted sky lit with the eternal stars, an intellectual ocean, towards which all rivers run, and from which now the isles and continents of thought receive their dew and rain."

—*The above is briefed by the author from Ingersoll's Lecture on Shakespeare, of 70 pages, delivered in 1891. See his Works.*

### LOVE IS ETERNAL

"It is a splendid thing to think that the woman you really love will never grow old to you. Though the wrinkles of time, though the mask of years, if you really love her, you will always find the face you loved and won. And a woman who really loves a man does not see that he grows old; he is not decrepit to her; he does not tremble; she always sees the same gallant gentleman who won her heart and hand. I like to think of it in that way, I like to think that love is eternal."—*Robert G. Ingersoll.*

### LOVE

"The affection that man has for woman is, in my judgment, the holiest and the most beautiful thing in nature; the affection that woman has for man—that affection, that something that we call love—has done all there is of value in the world. It has civilized mankind; made all the poems, painted all the pictures, and composed all the music. Take it from the world and we shall be simply wild beasts, far worse than wild beasts, for they have affections for each other and for their young."

—*From Ingersoll's argument in the Russell v. Russell case, before Martin P. Grey, Vice-Chancellor, at Camden, N. J., June 21, 1899.*

### INGERSOLL OVER HIS BROTHER'S GRAVE

"Dear Friends: I am going to do that which the dead oft promised he would do for me. The loved and loving brother, father, friend, died where manhood's morning almost touches noon and while the shadows still were falling toward the west. He had not passed on life's highway the stone that marks the highest point; but, being weary for a moment he laid down by the wayside, and, using his burden for a pillow, fell into that dreamless sleep that kisses down his eye-lids still. While yet in love with life and raptured with the world, he passed to silence and pathetic dust. Yet, after all, it may be best, just in the happiest, sunniest hour of all the voyage, while eager winds are kissing every sail, to dash against the unseen rock, and in an instant hear the billows roar above a sunken ship. The weather in mid sea or among the breakers of the further shore, a wreck at last must mark the end of each and all. And every life, no matter if its every hour is rich with love and every moment jeweled with joy, will at its close become a tragedy as sad and



deep and dark as can be woven of the warp and woof of mystery and death. This brave and tender man in every storm of life was oak and rock; but in the sunshine he was vine and flower. He was the friend of all heroic souls. He climbed the heights and left all superstition far below, while on his forehead fell the golden dawning of the grander day. He loved the beautiful, and was with color, form, and music touched to tears. He sided with the weak and with a willing hand gave alms. With loyal heart and with the purest hands he faithfully discharged all public trusts. He was a worshipper of liberty, a friend of the oppressed. A thousand times I have heard him quote these words: 'For Justice, all places a temple, and all seasons summer.' He believed that happiness was the only good, reason the only torch, justice the only worship, humility the only religion, and love the only priest. He added to the sum of human joy; and were every one to whom he did a loving service to bring a blossom to his grave, he would sleep tonight beneath a wilderness of flowers. Life is a narrow vale between the cold and barren peaks of two eternities. We strive in vain to look beyond the heights. We cry aloud, and the only answer is the echo of our wailing cry. From the voiceless lips of the unreplying dead there comes no word; but in the night of death hope sees a star, and listening love can hear the rustle of a wing. He who sleeps here, when dying, mistaking the approach of death for the return of health, whispered with his latest breath: 'I am better now!' Let us believe, in spite of doubts and dogmas, of fear and tears, that these dear words are true of all the countless dead. And, now to you who have been chosen from among the many men he loved to do the last sad office for the dead, we give his sacred dust. Speech cannot contain our love. There was, there is, no gentler, stronger, manlier man."

—*From funeral address, over Eben C. Ingersoll, Representative in Congress, at Oak Hill Cemetery, Georgetown, D. C.*

#### A VISION OF WAR

"These heroes are dead. They died for Liberty, they died for us. They are at rest. They sleep in the land they made free, under the flag they rendered stainless, under the solemn pines, the sad hemlocks, the tearful willows, and the embracing vines. They sleep beneath the shadow of the clouds, careless alike of sunshine or of storm, each in the windowless palace of rest. Earth may run red with other wars, they are at peace. In the midst of battle, in the roar of conflict, they found the serenity of death. I have one sentiment for soldiers, living and dead, Cheers for the living, tears for the dead."

—*From a speech to the Boys in Blue, at Indianapolis, Ind.*

#### AN AGNOSTIC

"An agnostic is a person who knows he knows nothing; and believes no other person knows any more than he does."



## ROBERT J. INGRAHAM (1864-1919), Missouri

### RELIGION

"This mighty mystery I do not understand, but my religion is a good thought, never dies, and a good act is eternal. The individual who expresses the one, or executes the other, may pass away, but his influence will live forever."

### THE STOCK YARDS DILEMMA

At one time in his practice Mr. Ingraham represented ten clients, at \$5,000 each per year, for merely advising them; if he went into court, then he got a regular fee. He was called by the Kansas City Stock Yards, one of these clients, to know what to do, as a great fire had taken place, when they were obliged to open the gates and let the stock into the streets to save the cattle, sheep and hogs from being destroyed by the flames. All was consternation, when Mr. Ingraham quietly said "We will have a receiver appointed, sell all the stock to the highest bidder, and let each owner come in and prove his claims." This was accordingly done, and inside of about two weeks the muddle was settled, all had their money.

### SETTLED QUESTION OF TITLE TO REAL ESTATE

At another time, a client of his came to him for advice. The client had sold an inmate of the Soldier's Home, in Leavenworth, Kans., a vacant piece of property in the suburbs of Kansas City, Mo., for \$700 cash, all the money the old soldier had, and at the request of the old soldier had turned over the abstract to a friend of the agent, whom the buyer of the property did not know. This friend proved not to be an expert upon titles, for when the client and agent soon after re-sold the ground for the old soldier for \$1,000, the attorney of the second buyer found a deed of trust, or mortgage, on the property, improperly released and would not pass the title. The client and agent was in a box, as he had chosen the first lawyer for the buyer, and the buyer had paid him for his opinion, which proved as it turned out quite worthless. Finally in his desperation the agent went to his attorney, Mr. Ingraham, who looked over the abstract and said: "Why man, this title is all right," and by the way, the client had tried in vain to get the last lawyer to pass the title on the ground that it was a good title, by adverse possession, and it had been referred to Judge Francis M. Black, ex-judge of the Supreme Court of Missouri, who coincided with lawyer No. 2, that the title was bad. "Well," said the agent, "I wish you would go with lawyer No. 2 and myself to see Judge Black."

"All right," said Ingraham. Accordingly all walked over to Judge Black's office. Said Ingraham to Black, "I think this release is all right." The controversy was over a release made by the trustee in the deed of trust when prohibited by statute. "For the reason," said Ingraham, "that there is a power of attorney in this deed of trust as shown in the abstract. Here it says, the instrument shall be released by the trustee." "But," said Judge Black, "the statute forbids this." "I don't care if it does. I do not believe you can take away the right of two sound headed men to make a contract for themselves; besides this statute is *ex post facto*. It was passed after this contract was made. It is retroactive," said Ingraham.

"Well, Ingraham, I believe you are right upon both of these propositions," said Judge Black. The title was accordingly passed. The second sale was made and the old soldier never knew of the worry of the agent but got his \$300 profit and departed a happy man.



## ANOTHER REAL ESTATE CASE

At another time this same client sold a piece of property consisting of a lot with a residence upon it. While the title was being examined the house burned, and it was found that the insurance policy had expired. The client called Ingraham up about 11 o'clock at night, as he usually pored over his cases until after midnight, and asked him how his deal stood, who was the loser. Said Ingraham, "Was this a straight purchase, not an option, with a good deposit upon the contract?" "Yes," said the agent. "Well, then, the buyer loses. He has bought something. Suppose the seller would not deliver the property, and in the meantime he had sold the property at a large profit, or struck oil, gold, silver or lead, could not the buyer make him deliver the property? Well, what is sauce for the goose, is sauce for the gander." In that deal the seller thought he would have to restore the house and left the city, and the buyer forfeited his \$100.00 earnest money, after consulting his attorney. But it is only fair to say in Mr. Ingraham's behalf, that the agent consulted as many as a score of lawyers, and all but one said the seller lost instead of the buyer; but the English authorities bear out Mr. Ingraham's view of the law.

## SULLIVAN V. MISSOURI PACIFIC RY. CO., 117 MO., 214

Mr. Ingraham won great laurels when but twenty-five years of age, in a damage case tried in the Circuit Court in K. C., Mo., in 1889, and before the Supreme Court in 1893, when but twenty-nine. The facts were, according to plaintiff's evidence, that Mrs. Ellen Sullivan, in crossing the Company's tracks within the corporate limits of Kansas City, was killed by defendant's train, along Front street in said city. She went upon the track, was struck by defendant's cars, the train running at the rate of about 20 miles per hour; that no bell was ringing nor whistle blowing; that Mrs. Sullivan and six or seven other ladies approached the crossing and all started to cross over, four or five of them in advance, followed by a Mrs. McKeever and Mrs. Sullivan, a few steps in their rear. Mrs. McKeever leading and Mrs. Sullivan following. The ladies in advance crossed the track and just as Mrs. McKeever stepped upon it someone exclaimed: "The switch engine is coming." Mrs. McKeever answered, "We will make it," and stepped across the track; as she was stepping off the track Mrs. Sullivan looked up and down the track, stepped on it, and as she did so either tripped against the rail or caught her foot in her dress and fell. She was a large woman; she got partly up, fell again, struggled toward or onto the south rail and before she could get over it, was struck by the engine of the train and died within a minute. The Supreme Court reversed the case on account of Mrs. Sullivan's contributory negligence. Mr. Ingraham got a rehearing before that court, contending that was a question for the jury to decide, inasmuch as the ordinance made it unlawful to run trains in the corporate limits of the city at a faster rate than six miles an hour; that deceased had a right to assume they were law-abiding and the probability was, she would have gotten over the track as the evidence showed that the train was some 200 feet from her when she went onto the track. The Court reversed themselves and remanded the case back to the trial Circuit Court with instructions, holding:

"Where one who approaches a railway crossing in a city observes an engine approaching, and relying on the presumption that the persons in charge of the engine would obey an ordinance limiting the rate of speed to six miles an hour or less, attempts to make the crossing and is struck down and killed by the engine, the question of her contributory negligence is one for the jury; that she had a right to presume, unless she knew to the contrary, that the train was running not to exceed six miles an hour; that even though she was negligent, yet if the defendant's servants



discovered, or could have discovered by the use of ordinary care, her condition and its danger, and could have avoided injuring her by the use of ordinary care and failed to do so, her negligence was no defense to the action."

The case was remanded with the above instructions, and then settled by the defendant Company paying the judgment first rendered by the Circuit Court.

The compiler of this work was in Jefferson City just after this victory by Mr. Ingraham and Judges Brace, Gant and Black each said to him in separate conference and of their own accord, virtually praiseworthy words as follows: "You have a very bright lawyer in Kansas City. He is bound to make his mark. We have never heard a better argument than he made before the full bench on the re-hearing of *Sullivan v. The Missouri Pacific Ry. Co.* He is a young man, too." On being asked who was alluded to, each answered: "A young man by the name of Ingraham."

### THE CUDAHY CASE

Another important matter was settled by Mr. Ingraham in Chicago, for Jack Cudahy, in which he got for his client a settlement of \$1,500,000 and a fee for himself of \$75,000.

Mr. Ingraham and Mr. Cudahy went to Chicago to have a conference with the attorneys for the other heirs of Mr. Cudahy, who had recently died, leaving a will, Jack Cudahy agreeing to pay Mr. Ingraham one-half of 1% of whatever sum he could effect a settlement for. After the attorneys for the heirs had been in conference, with the leading counsel for the estate, and with the other lawyers for other heirs, leading counsel spoke up and said: "Mr. Ingraham, you are barred by the statute of limitations, as more than two years has elapsed since Michael Cudahy died. You are out of court." "Oh," said Ingraham, "we don't claim anything under the will. We claim under an agreement between the heirs." "Well," said leading counsel, turning to the bell-weather among the heirs, "Is there any agreement between the heirs?" "Well, yes," said this heir, "but I have that agreement at home locked up. They will never see it." "Now, look here, said leading counsel, there are going to be no cards played under the table. You bring that agreement in tomorrow morning at 10 o'clock. This conference stands adjourned till that time."

The next morning, after reading over the agreement, which Jack had been unable to locate, the whole matter was settled, under the terms of the agreement of the heirs, whereby Jack got \$1,500,000 and Ingraham his fee of \$75,000. It may be added here, that Mr. Ingraham told the writer hereof that that was the easiest fee he ever earned.

### JULES C. ROSENBERGER'S TRIBUTE

"Sacrifice of self was the pre-eminent quality in Mr. Ingraham."  
—*Memorial Proceedings, May 17, 1919.*

### EDWIN C. MESERVEY'S ESTIMATE

"In the trial of law suits he was, in my opinion, one of the ablest that we have ever had at our bar. In the presentation of a case to the court or to the jury he was clear, convincing, forcible, logical; and without any attempt at rhetorical display, he showed a sincerity which carried conviction both to the court and jury."—*Idem.*

### FRANK HAGERMAN'S CHARACTERIZATION

"I knew him as a true man and a great lawyer of my home city. Quiet, forceful, energetic, studious and honest he attained a professional height towards which any young man can always longingly look. His character was always of the highest. The confidence of courts and of his clients



in him was unbounded; his ability to judge human nature was great. The beating of the public pulse was always heard and understood by him. He was unceasing in his labors, but careless of its effect upon his physique. In the end, the strain was too great for his physical endurance. I knew him intimately, and loved and respected him."—*Frank Hagerman, Idem.*

#### TESTIMONY OF E. R. DURHAM—A PARTNER

"Mr. Ingraham had a broad sympathy and wonderful generosity and charity. He would go a long way to help a friend in trouble or in need. I remember one time that one of Mr. Tichenor's clients (Mr. Ingraham had read law in the latter's office), a very highly respected citizen of Kansas City, had gotten into trouble. He was well along in years. He came to Mr. Ingraham for help, as many of these old clients did. Mr. Ingraham conferred with his old preceptor. Mr. Tichenor said 'Let him pay the penalty!' Mr. Ingraham could not see it that way, signed a note at the bank with this old client, and saved him from committing suicide; though Mr. Ingraham had to pay the note, when in bed suffering with paralysis, of which he died, after lingering for two years. The client whom he saved is living yet. His charity was again illustrated in his taking care of a brother lawyer's life insurance, when in financial distress, for money embezzled. This money he never got back, and did not expect he would. He wanted nothing said of either of these charitable acts. His charities were secret, not like the Pharisee. In fact, his charity and humane acts were chief characteristics."

#### O. H. DEAN'S TESTIMONY

"Mr. Ingraham was much more than a diligent and capable member of our profession. I regarded him one of the brightest and best trained lawyers at our bar; strong as a trial lawyer, strong in the Appellate courts, but equally capable as a wise counsellor in all business and commercial matters; he was most conscientious in his work; would not give opinions, nor would he try cases until he was well prepared. His clients' troubles and difficulties became his; in his anxiety to protect them, he forgot himself. \* \* \* He had highly pledged himself to the work to which he had dedicated his life. He saw with clear vision what it meant; he saw its dignity and worth. He saw that without law justly and wisely written, declared and administered there could be no justice, no peace, no safety, no prosperity; no progress. He saw that all our law—constitutional, statutory and municipal, in the narrow sense of that word, as well as the law declared by our courts, had almost wholly their beginnings with and were written by members of our profession, and upon them, therefore, devolved not only the framing, the interpretation and the enforcement of the laws, but the creation of a respect for its administration. He discussed with me more than once the action of the Cincinnati mob, indignant at the mal-administration of the criminal law in that city, that tore down the courthouse, set fire to and burned the records, that created a scandalous riot. \* \* \* He felt that the work he was engaged in was the highest and noblest to which any man could consecrate his life; if we failed to command the highest respect and confidence, and exert a profound influence, it was not because of the work itself but because of our failure to perform that work as we are bound to by every requirement of our profession to do. Was he not right? Should not the lawyer by reason of his high calling be among the princes of the earth?"

—*Memorial Proceedings, Kansas City, Mo., May 17, 1919.*

#### WANT OF EXERCISE CAUSED HIS EARLY DEATH

"It is my judgment that Jay Ingraham's sickness was due to lack of physical recreation. I never knew him to take exercise of that kind.



He gave all his energy to slavish devotion to business. He paid a severe penalty. Stricken in the prime of his manhood, he was a patient sufferer for about two years from an affliction that confined him to his bed, and separated him from even glimpses of his fellow members of the bar who loved him so well. Then on March 23, 1919, came the

'Sleep that knits up the ravel'd sleeve of care,  
and closes the span of life.'

"It came to Jay Ingraham at the meridian of his life, a life that promised long years of usefulness. I drop here affection's tear to my departed friend. Death has relieved his suffering. He died with full belief in a future life. At the gateway of Heaven he was separated from his grief-stricken family and a multitude of friends. His soul passed into the Great Beyond.

'Our spirits loved and love him still.' "

—*Thomas R. Morrow, of the Kansas City Bar, May 17, 1919.*

#### W. H. H. PIATT'S SPRIG OF ROSEMARY

"As a lawyer he never prostituted the franchise granted him as a lawyer by society, to subject society to any scheme, law or design calculated to work to the benefit of a special interest, class or clan as against the general interests of society or against the underlying fundamentals of our form of government. I merely lay a sprig of rosemary at his bier. He made justice his only temple and truth and sincerity his only priest."

—*Memorial, May 17, 1919.*

#### JUDGE W. O. THOMAS'S ESTIMATE

"I do not believe that Jay Ingraham ever took a case which would put him in opposition to the rights of society, against his love for the people, his desire to see that laws control, that people's rights were conserved. \* \* \* At a time when I needed help, when I could give nothing in return, Jay Ingraham helped me, and it is this personal element and personal loss that makes me feel so keenly the removal of this great-hearted, strong, noble man who has so untimely passed to his reward."

—*Memorial Proceedings.*

#### R. E. BALL'S OPINION

"Ingraham was a fighter and an exponent of the faith in his absolute refusal to represent an unconscionable cause. It was the natural result of that quality in him to see that justice and the right was done. At one time he was in a case opposed to me, and after he got into it he became convinced that his client was wrong and he withdrew; he did that because he respected himself and he respected the right and justice of the cause; so I think that his outspoken, straight out antagonism under all circumstances, of what he conceived to be wrong, ought to be emphasized as one of his very best qualities."—*May 17, 1919, Memorial Proceedings.*

#### TRIBUTE OF J. G. L. HARVEY

"I think one of the greatest tributes ever paid to Mr. Ingraham was that of Mayor Neff. Mr. Neff was a Republican, and Mr. Ingraham was a Democrat, and held over as City Counselor from the preceding Democratic Administration; but Mr. Neff saw his worth and retained him for about a year as his legal adviser. \* \* \* It has always seemed to me that his predominating characteristic was loyalty—loyalty to the cause he represented, and loyalty to his friends. \* \* \* He occupied a peculiar position in our midst, and we shall not soon see his like again."

—*Memorial Proceedings, May 17, 1919.*



## JAMES IREDELL (1751-1799), North Carolina

### THE RELIGIOUS TEST

“Every person in the least conversant with the history of mankind knows what dreadful mischiefs have been committed by religious persecution. Under the color of religious tests, the utmost cruelties have been exercised. Those in power have generally considered all wisdom centered in themselves, that they alone had the right to dictate to the rest of mankind, and that all opposition to their tenets was profane and impious. The consequence of this intolerant spirit has been that each church has in turn set itself up against every other, and persecutions and wars of the most implacable and bloody nature have taken place in every part of the world. America has set an example to mankind to think more rationally—that a man may be of religious sentiments differing from our own, without being a bad member of society. The principles of toleration, to the honor of this age, are doing away with those errors and prejudices which have so long prevailed even in the most intolerant countries. In Roman Catholic lands, principles of moderation are adopted, which would have been spurned a century or two ago. It will be fatal, indeed, to find, at the time when examples of toleration are set even by arbitrary governments, that this country, so impressed with the highest sense of liberty, should adopt principles on this subject that were narrow, despotic, and illiberal.”

—*Debate in the Convention on that article in the Constitution in regard to it.*

Iredell was born at Lewes, England; emigrated to N. C., about 1768; admitted to bar, 1775; became prominent as a lawyer; Judge of the State Superior Court, 1777; Atty. Gen'l of State, 77-79; from 1790 till his death was an Associate Justice of the Supreme Court of the U. S.

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### BOOKS

“Book love, my friends, is your pass to the greatest, the purest, and the most perfect pleasure that God has prepared for his creatures. It lasts when all other pleasures fade. It will support you when all other recreations are gone. It will last you until your death. It will make your hours pleasant to you as long as you live.”—*Anthony Froloope.*



## W. W. IRWIN (1803-1856), Minnesota

### APPEAL TO JURY

"If you are to yield to the tremendous pressure urged upon you to tear down the rules of law and common sense, then is the only bulwark of American and civilized liberty washed from its foundation. If fanaticism and the testimony of this vile murderer, conducted to the witness stand with such pomp, instead of the calm analysis of the evidence is to govern you, then tell your artists to take down from the domes of your court-houses that angel of justice, and to put in her place the diseased form of a hag from hell. Let her blink behind the bandage, only put on to dupe the public; take down the flag represented by the red, white, and blue; the red emblematic of the blood of the Divine Martyr, the white emblematic of the immaculate purity of His spirit and life, the blue representing the skies to which He ascended; and bid the officers lift on high your created, polished, black field of hellish perjury, on which is painted the form of the human tiger. These figures, it seems to me, are well borne out by the calm consideration of this case. Your Honor, I have done. Gentlemen, I leave my client in your hands for judgment, conscious that you, gentlemen of the jury, are in the hands of God, and no power can harm or mar, hold or control, your verdict. You are the conscience of this nation. Beware that you do not betray it."

—*In the Harry Hayward Murder Trial.*

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### PEN PORTRAIT OF CARLYLE

"He looked, I thought, the prophet; his clothes loose and careless, for comfort, not show; the shaggy, unkempt gray thatch of hair; the long head, the bony, almost fleshless face of one who fasted and suffered; the tyrannous overhanging cliff forehead; the firm, heavy mouth and out-thrust challenging chin—the face of a fighter; force everywhere, brains and will dominant; strength redeemed by the deepest eyes, most human, beautiful; by turns piercing, luminous, tender, gleaming, pathetic, too, for the lights were usually veiled in brooding sadness, broken oftenest by a look of dumb despair and regret; a strong, sad face, the saddest face I ever studied—all petrified, so to speak, in tearless misery as of one who had come to wreck by his own fault and was tortured by remorse—the worm that dieth not."—*Frank Harris.*



## JOHN JAY (1745-1829), New York

### PATIENCE AND RESIGNATION

"My robe may become useless, or it may not. I am resigned to either event. He who governs all makes no mistakes, and a firm belief of this would save us from many. \* \* \* The reflection that the majority of electors were for me is a pleasing one; that injustice has taken place does not surprise me, and I hope will not affect you very sensibly. \* \* \* A few years more will put us all in the dust, and it will then be of more importance to me to have governed myself, than to have governed the State."

—*John Jay upon learning of the fraudulent practices by which he was cheated out of the governorship of New York.*

QUALIFICATIONS OF A JUDGE: "Firmness, integrity, and caution."  
—*John Jay.*

### ROBES FOR THE JUDGES—WHY ADOPTED

Before Jay took office on the Supreme Bench of the U. S. a curious discussion arose concerning the habiliments of the judges while on the bench. By some the scholarly gown was preferred; others advocated the classical toga; others desired the more sacred stole (a long loose garment reaching to the feet). But it was a question of the English judicial wig, which is associated with Blackstone, Bacon, Coke, Mansfield, Buller and other English judges, over which the most exciting controversy arose. To the use of this appendage Jay most emphatically objected. The subject was discussed dehors judicial circles. Hamilton, then Secretary of the Treasury, who favored the methods, costumes and fashions of England, strongly sustained, not only the judicial wig, but the toga; while Jefferson, 'whose simple manners and opposition to the aristocratic tendencies of the federal leader, exhibited themselves in the combing of the hair out of the fashionable pigtail, discarding hair-powder, wearing pantaloons instead of breeches, fastening the shoes with strings instead of elaborate buckles,' indulged in denunciations of all unnecessary apparel for the judges. He said to Hamilton when the subject was under discussion: 'I have been reading your letter to Jay concerning the apparel of the judges of the Supreme Court.' 'Well, what do you think of it?' 'That I have no patience with the prevailing custom of imitating everything English in our Democratic institutions, particularly in the organization of our courts. If we must have peculiar garbs for the judges, I think the gown is the most appropriate, but for Heaven's sake discard the monstrous wig, which makes the English judges look like rats peeping through bunches of oakum,' was the reply."

—*L. B. Proctor's 'American Lawyer,' Apr., 1896.*

### THE MAJORITY—EVIL AND IGNORANT

"The majority of every people are deficient both in virtue and knowledge."—*Said by Jay.*

### JAY WROTE FIVE ARTICLES OF THE FEDERALIST

Jay wrote the 2nd, 3rd, 4th and 63rd papers of the "Federalist."



## CHISHOLM VS. GEORGIA

"The most famous and important case in Jay's time was *Chisholm v. Georgia*, in which the Chief Justice held that a State of the Union was suable in the Supreme Court, at the instance of a private citizen of a sister State. From this judgment Mr. Justice Iredell dissented; and time as well as the XI. Amendment to the Constitution sustains the dissent. The reasoning of the court is, however, unanswerable, altho the amendment forbade suit at the instance of a private citizen. For, say what we wil, the States are not sovereign in unlimited sense, and when we admit this the result is something less than sovereignty. The Nation is supreme, as was shown in 1861, and if the Nation is supreme the individual States composing the Nation cannot be. The famous decision of *McCulloch v. Maryland*, 1819, is largely a restatement of Jay's opinion of 1793, and it is on the opinion of *Chisholm v. Georgia* that Jay's claim to greatness as a judge must rest."

—James Scott Brown—*Gt. Am. Lawyers*, Vol. 1, 286-7.

(Jefferson, in speaking of the Dartmouth College case, said: "To produce 150 pages of more recondite and irreconcilable contradiction, *obscurio vera, involvens*, than is found in Marshall's opinion in the Dartmouth College case. There is more learning, more real practical knowledge of constitutional law, more solid movement of argument, in Jay's opinion in *Chisholm v. Georgia* than can, by the most severe study, be found in Marshall's vaunted opinion of the N. H. College case. The truth is, Webster took Marshall by storm in that case. There is not a judge in America who knows how to rule by it, or who can decide what laws are, or what are not *ex post facto*.")

## JAY'S TREATY

Jay went, at the instance of Washington, in 1794, to England to negotiate a treaty between that Nation and the U. S. By it American citizens received an award of \$10,245,000; but it made Jay very unpopular in this country because it did not give our people all they thought they ought to have. James Savage, once President of the Mass. Hist. Society, told his grandchildren that he remembered seeing these words chalked in large letters around the enclosure of Robt. Treat Payne:—"Damn John Jay! Damn everyone that won't damn John Jay! ! Damn everyone that won't put lights in the windows and sit up all night damning John Jay! ! !". But of his unpopularity Jay said: "Calunmy is seldom durable; it will in time yield to truth." James Parton says of the Treaty:—"It procured the surrender of the English posts (some seven in number,) inaugurated the policy that naturally issued in arbitration, made some slight beginnings of reciprocity and free trade, and postponed inevitable war for 18 years." And Judson Harmon, of Cincinnati, O., said at the Jay Banquet, in Kansas City Mo., Nov. 14, 1911:—"If John Jay had not gone to England and consummated that treaty it would be difficult to tell what the territory that now comprises the U. S. would be. Another war might have followed. And the outcome of a war, at that time, is difficult to imagine now. John Jay saved the U. S."

## ELBERT HUBBARD ON JAY

"Peter Jay, John Jay's father, paid Benjamin Kissam, the eminent lawyer, 200 pounds (\$1,000) to take John Jay as apprentice for five years. In his intellect there was not the flash of Hamilton, nor the creative quality possessed by Jefferson, nor the large all-roundness of Franklin, but he had something better than genius, and that is common sense."



## HILDRETH ON JAY'S TREATY

"In 1794 when Washington wanted a special minister to England, he chose Chief Justice Jay. In point of Revolutionary services, only the President stood upon higher ground; nor could any person, except the Vice-President pretend to a place upon the same level. In lofty disinterestedness, in unyielding integrity, in superiority of the illusions of passion, no one of the great men of the Revolution approached so near to Washington. Profound knowledge of the law, inflexible sense of justice and solidity of judgment, had especially marked him out for the office which he held. Having played a very active part in a State, the seat of hostilities during the whole struggle, he knew what war was, and dreaded it accordingly. One of the ministers who negotiated the treaty, and afterward Secretary of Foreign Affairs, he was perfectly familiar with all the grounds of the controversy as between the two nations. Though on questions of principle perfectly unyielding, in matters of interest and expediency he knew the wisdom of giving up a part rather to lose the whole. The only serious objection was his judicial position; but even that gave additional dignity to the mission, and in a crisis so important the objection lost much of its weight."

—1 *Hildreth's Hist. U. S. (2nd Series)*, 488.

## WEBSTER'S FIRST MEETING WITH JEREMIAH MASON

"Mr. Webster first met Jeremiah Mason on the occasion of a criminal trial. A certain Col.——, a Democrat of note, had been put on trial on a charge of counterfeiting. The case against him was more than serious, for many acts of passing counterfeit money had been brought home to him. The Democrats, however, were very anxious that the colonel should be acquitted. Mason was secured as the prisoner's counsel, and money raised to support the defence. On the very eve of the trial the Attorney-General, who was addicted to drinking, failed the prosecution; whereupon Mr. Webster was called upon to act in his place. Mason had heard of his promise, but remarked in his plain way that 'he had heard similar things of young men before,' and did not disturb himself about his antagonist. He soon found out that he had no common adversary to deal with. Webster 'came down upon him,' as he said, 'like a thunder-shower.' The prisoner was, indeed, acquitted; but this was, in Mr. Mason's own opinion, rather owing to the political leaning of the jury than to the superiority of the defence."

—*Harvey's Reminiscences of Webster*, 58.

JUDGE STORY OFFERED TO HELP WEBSTER IN HIS HAYNE  
REPLY

"Judge Story called on Mr. Webster on the evening previous to the delivery of the speech in reply to Robt. Y. Hayne, and, after expressing some anxiety as to the result of the debate, offered to aid in looking up materials to be used in his reply. Mr. Webster thanked him, and said: 'Give yourself no uneasiness, Judge Story; I will grind him as fine as a pinch of snuff!' "—*Harvey's 'Reminiscences of Webster,'* 156.



## THOMAS JEFFERSON (1743-1826), Virginia

### PRINCIPLES OF GOVERNMENT

“Equal and exact justice to all men, of whatever state and persuasion, religious or political; Peace, commerce, and honest friendship with all nations, entangling alliances with none; The support of the State governments in all their rights, as the most competent administration for our domestic concerns and the surest bulwarks against anti-republican tendencies; The preservation of the General Government in its whole constitutional vigor, as the sheet-anchor of our peace at home and safety abroad; A jealous care of the right of election by the people, a mild and safe corrective of abuses, which are lopped by the sword of revolution where peaceable remedies are unprovided; Absolute acquiescence in the decisions of the majority, the vital principles of republics, from which there is no appeal but to force, the vital principle and immediate parent of despotism; A well-disciplined militia, our best reliance in peace and for the first moments of war, till regulars may relieve them; The supremacy of the civil over the military authority; Economy in public expense, that labor may be lightly burthened; The Honest payment of our debts and sacred preservation of the public faith; Encouragement of agriculture, and of commerce as its handmaid; The diffusion of information, and arraignment of all abuses at the bar of the public reason; Freedom of religion, freedom of the press, and freedom of persons under the protection of the Habeas Corpus; And trial by juries impartially selected.

“These principles form the bright constellation which has gone before us, and guided our steps, through an age of Revolution and Reformation. \* \* \* They should be of the creed of our political faith, the text of civil instruction, the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or alarm, let us hasten to retrace our steps and regain the road which alone leads to peace, liberty and safety.”

—*Thomas Jefferson—From 1st Inaugural Address, March 4, 1801*

### NAPOLEON

“Bonaparte was a lion in the field only. In civil life, a cold-blooded, calculating, unprincipled usurper, without a virtue; no statesman, knowing nothing of commerce, political economy, or civil government, and supplying ignorance by bold presumption.”

—*Thomas Jefferson in letter to John Adams.*

### LUTHER MARTIN

“Martin should be committed as *particeps criminis* of Burr’s. \* \* \* He is an unprincipled and impudent Federal bull-dog.”—*Thomas Jefferson.*

### GEORGE WYTHE

“No man ever left behind him a character more venerated than George Wythe. His virtue was of the purest tint; his integrity inflexible and his justice exact; of warm patriotism, and devoted as he was to liberty and the natural and equal rights of men, he might truly be called the *Cato* of his country, without the avarice of the Roman, for a more disinterested person never lived.”—*To John Saunderson, 1820.*



## PATRICK HENRY

"You ask some account of Mr. Henry's mind, information and manners, in 1759-60, when I first became acquainted with him. We met at Nathan Dandridge's, in Hanover, about Christmas of that winter, and passed, perhaps, a fortnight together at the revelries of the neighborhood and season. His manners have something of the coarseness of the society he had frequented; his passion was fiddling, dancing and pleasantries. He excelled in the last, and it attached every one to him. The occasion, perhaps, as much as his idle disposition which might give the measure of his mind or information. Opportunity was not wanting, because Mr. John Campbell was there, who had married Mrs. Spottswood, the sister of Col. Dandridge. He was a man of science, and often introduced conversations on scientific subjects. Mr. Henry had a little before broke up his store, or rather, it had broke him up, and within three months after he came to Williamsburg for his license, he told me, I think, he had read law not more than six weeks."—*To William Wirt, 1815.*

## JAMES MADISON

"My successor, to the purest principles of republican patriotism, adds a wisdom and a foresight second to no man on earth." (To Gen. Kosciuszko, 1810). "He is the ablest statesman." (To John Melish, 1817). "Such a mind as his, fraught with information and with matter for reflection, can never know ennui." (To John Adams, 1817). "You must take up your pen against Hamilton. You know the ingenuity of his talents and there is not a person but yourself who can foil him. For Heaven's sake, then, take up your pen, and do not desert the public cause altogether."—*To Madison, 1798.*

## WASHINGTON

"His mind was great and powerful, without being of the very first order; his penetration strong, though not so acute as that of Newton, Bacon, or Locke; and as far as he saw, no judgment was ever sounder. He was slow in operation, but sure in conclusion. Hence the common remark of his officers, of the advantage he derived from counsels of war, where, hearing all suggestions, he selected whatever was best; and certainly no general ever planned his battles more judiciously. But if deranged, during the course of the action, if any member of his plan was dislocated by sudden circumstances, he was slow in readjustment. The consequence was that he often failed in the field, and rarely against an enemy in station, as at Boston and York. He was incapable of fear, meeting personal dangers with the calmest unconcern. Perhaps the strongest feature of his character was prudence, never acting until every circumstance, every consideration, was maturely weighed, refraining if he saw doubt, but, when once decided, going through with his purpose, whatever obstacles opposed. His integrity was most pure, his justice the most inflexible I have ever known, no motives of interest of consanguinity, of friendship or hatred, being able to bias his decision. He was, indeed, in every sense of the words, a wise, a good, and a great man. His temper was naturally irritable and high toned; but reflection and resolution had obtained a firm and habitual ascendancy over it. If, however, it broke its bounds, he was tremendous in his wrath. In his expenses he was honorable, but exact; liberal in contributions to whatever promised utility; but frowning and unyielding on all visionary projects, and all unworthy calls on his charity.

"His heart was not warm in its affections; but he exactly calculated every man's value, and gave him a solid esteem proportioned to it. His person was fine, his stature exactly what one would wish, his deport-



ment easy, erect and noble; the best horseman of his age, and the most graceful figure that could be seen on horseback. Although the circle of his friends, where he might be unreserved with safety, he took a free share in conversation, his colloquial talents were not above mediocrity, possessing neither copiousness of ideas nor fluency of words. In public, when called upon for a sudden opinion, he was unready, short and embarrassed. Yet he wrote readily, rather diffusely, in an easy and correct style. This he had acquired by conversation with the world, for his education was merely reading, writing, and common arithmetic to which he added surveying at a later day. His time was employed in action chiefly, reading literature, and that only in agriculture and English history. His correspondence became necessarily extensive, and, journalizing his agricultural proceedings, occupied most of his leisure hours within doors.

On the whole his character was, in its mass, perfect, in nothing bad, in a few points indifferent; and it was truly said, that never did nature and fortune combine more perfectly to make a man great, and to place him in the same constellation with whatever worthies have merited from man an everlasting remembrance. For this was the singular destiny and merit of leading the armies of his country successfully through an arduous war for the establishment of its independence; of conducting its councils through the birth of a government, new in its forms and principles until it has settled down into a quiet and orderly train; and of scrupulously obeying the laws through the whole of his career, civil and military, of which the history of the world furnishes no other example. How then can it be perilous for you to take such a man on your shoulders? I am satisfied the great body of the republicans think of him as I do. We were, indeed, dissatisfied with his ratification of the British treaty. But this was short lived. We knew his honesty, the wiles with which he was encompassed, and that age had already begun to relax the firmness of his purposes; and I am convinced he is more deeply seated in the love and gratitude of the republicans, than in the pharisaical homage of the federal monarchists. For he was no monarchist from preference of his judgment. The soundness of that gave correct views of the rights of man, and his severe justice devoted him to them. He has often declared to me that he considered our constitution as an experiment on the practicability of republican government, and with what dose of liberty man could be trusted for his own good; that he was determined the experiment should have a fair trial, and would lose the last drop of his blood in support of it. \* \* \* I felt on his death, with my countrymen, that verily a great man hath fallen this day in Israel."

—*To Dr Walter Jones, 1814.*

### SOME NOTABLE SAYINGS

"Rebellion to tyrants is obedience to God."—*Motto on Jefferson's seal.*

"Union is the sheet anchor of our peace at home and safety abroad."

—*From 1st Inaugural.*

"I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man."—*To Benj. Rush, 1800.*

"The God who gave us life, gave us liberty at the same time; the hand of force may destroy; but cannot disjoint them."

—*From Memorial Address to Geo. III.*

"Let those flatter who fear, it is not an American art."

—*From Address to Geo. III.*

"Nature intended me for the tranquil pursuits of science by rendering them my supreme delight."—*From a letter.*



"Were it left for me to decide, whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."

—*From letter from Paris, on Shay's Rebellion.*

"The man who fears no truths has nothing to fear from lies."

—*To Dr. Geo. Logan, 1816, as to Federal s'anders.*

"That government is best which governs least."

"No government can be maintained without the principles of fear as well as of duty. Good men will obey the last, but bad ones the former only."—*From 1st Inaugural, Mar. 4, 1801.*

### TEN PRECEPTS OF ADVICE

1. "Never put off til tomorrow what you can do today."
2. "Never trouble another for what you can do yourself."
3. "Never spend your money before you have it."
4. "Never buy what you do not want because it is cheap; it will be dear to you."
5. "Pride costs more than hunger, thirst and cold."
6. "We never repent of eating too little."
7. "Nothing is troublesome that we do willingly."
8. "How much pain have cost us the evils which never happened."
9. "Take things by their smooth handle."
10. "When angry, count ten, before you speak: if very angry, an hundred."

### LAWYERS TALK TOO MUCH

"If the present Congress errs in too much talking, how can it be otherwise, in a body to which the people send one hundred and fifty lawyers, whose trade it is to question everything, yield nothing, and talk by the hour? That one hundred and fifty lawyers should do business together ought not to be expected."

—*Jefferson's 'Autobiography,' speaking of the brevity of Franklin and Washington, in debate—neither of whom ever spoke over ten minutes.*

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### MAKING IT LEGAL

If a man were to give another an orange he would simply say: "I give you this orange." But when the transaction is intrusted to a lawyer to put in writing he adopts this form:

"I herewith give and convey to you, all and singular, my estate and interest, right, title, claim and advantages of and in said orange, together with all its rind, juice, pulp and pips, and all rights and advantages therein, with full power to bite, cut, suck and otherwise eat the same or give the same away with or without the rind, skin, juice, pulp or pips, anything hereinbefore or hereinafter or in any other deed or deeds, instrument or instruments, of whatever nature or kind soever to the contrary in any wise notwithstanding."—*The Chicago News.*



## BLACKSTONE

"Blackstone, whose book, although the most elegant and best digested of our catalog, has been perverted more than all others, to the degeneracy of legal science. A student finds there a smattering of everything, and his indolence persuades him that if he understands that book, he is master of the whole body of the law. The distinction between these and those who have drawn their stores from the deep mines of Coke and Littleton, seem well understood, even by the appellation of Blackstone lawyers to the ephemeral insects of the law."—*To Judge Tyler, 1812.*

## JOHN ADAMS

"He never acts upon any system, but is governed by his feelings of the moment. He is vain, irritable, and a bad calculator of the force and probable effect of the motives which govern men. This is all the ill which can possibly be said of him. He is as disinterested as the Being who made him. He is profound in his views, accurate in his judgment, except when knowledge of the world is necessary to form a judgment. He is so amiable that I pronounce you will love him, if ever you become acquainted with him. He would be, as he was, a great man in Congress."

—*To James Madison, 1787.*

## GALLATIN

"The ab'est man except the President (Madison) who was ever in the administration." (Gallatin was Jefferson's Sec. of the Treasury.)

—*To Wm. Wirt, 1811.*

## WHAT WE OWE TO THOMAS JEFFERSON

1. The Declaration of Independence,
2. Statute of Virginia for Religious Freedom,
3. The University of Virginia,
4. Opposition to Slavery,
5. The decimal system of American coinage;—the dime, dollar, and eagle,
6. Keeping wigs from the heads of our Judges,
7. Removing in Virginia the laws of primogeniture and entail, and the abolishment of the English established church,
8. Untiring efforts to establish a system of common schools for the free education of the masses—in which he failed because of insufficient support,
9. The invention of an improved plow, and the revolving office-chair,
10. The introduction of rice cultivation in the U. S.,
11. The first manual on Parliamentary Law in this country which he wrote and published,
12. Driving the Algerine pirates from the seas
13. The Doctrine that all governments derive their just powers from the consent of the governed,
14. The acquisition from Napoleon of the Louisiana Territory,
15. The Lewis and Clarke Expedition, opening up the vast territory between the Valley of the Mississippi and the Pacific,
16. His untiring labors in behalf of science, natural history, agriculture, culture and education.



## SIR GEORGE JESSEL (1824-1883), England

### HIS INCOME AS A LAWYER

"Before his elevation to the bench, Jessel's income at the bar was \$125,000 per year."—7 *Green Bag*, 383.

### QUALIFICATION AS JUDGE

"In swiftness and sureness of intuition, in the tenacity of memory, in healthy superiority to mere precedent, and in masterful grasp of facts, Jessel presented a combination of qualities to be found in no other equity judge in this country."—7 *Green Bag*, 283.

### QUICK IN DECISION

"Mr. James Bryce, in his biographical sketch, states that Sir George Jessel, late master of the rolls, during his long career on the bench but upon two occasions did he fail to decide the matter presented to him at the termination of the argument."

—Frederic R. Courdert's "*Certainty and Justice*."

### COURTS OF EQUITY

"The rule of Courts of Equity are not like the rules of the common law, supposed to have been established from time immemorial. They have been established from time to time, altered, improved, and refined from time to time. In many cases we know the names of the chancellors who invented them—as, for example, the separate use of a married woman, the restraint on alienation, the modern rule against perpetuities, and the rules of equitable waste. We can name the chancellors who first invented them, and state the date. The older precedents in equity are of very little value; the doctrines are progressive, refined, and improved."

—*Re Hallett's Estate*—*Law Reports*, 13 *Chancery Div.*, 710—  
per Sir George Jessel, Judge.

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## THOMAS CORWIN

"We have on the platform in these times no speaker of the type of Thomas Corwin. He had remarkable influence whenever he participated in debate in the House of Representatives. On the stump or hustings he would draw audiences away from Henry Clay or any of the famous speakers of the time. I sometimes wonder if our more experienced and more generally educated audiences of today would be swayed by Corwin's methods. He had in the highest degree every element of effective speech. He could put his audience in tears or hilarious laughter or arouse cheers. He told more stories and told them better than anyone else, and indulged freely in what is called Fourth of July exaggeration. He would relieve a logical presentation which was superb and unanswerable by a rhetorical flight of fancy, or by infectious humor."

—C. M. Depew's '*Memories of 80 Years*,' 321.



## SIR WILLIAM JONES (1746-1794), England

### WHAT CONSTITUTES A STATE

What constitutes a State?  
Not high-raised battlement or labored mound,  
Thick wall or moated gate;  
Not cities proud with spires and turrets crowned;  
Not bays and broad-armed ports,  
Where, laughing at the storm, rich navies ride;  
Not starred and spangled courts,  
Where low-browed baseness wafts perfume to pride.

No:—men, high-minded men,  
With powers as far above all brutes endued  
In forest, brake, or den,  
As beasts excel cold rocks and brambles rude—  
Men who their duties know,  
But know their rights, and knowing, dare maintain,  
Prevent the long aimed blow,  
And crush the tyrant while they rend the chain—  
These constitute a state;

And sovereign law, that state's collected will,  
O'er thrones and globes elate  
Sits empress, crowning good, repressing ill.  
Smit by her scared frown,  
The fiend, Dissension, like a vapor sinks;  
And e'en the all-dazzling crown  
Hides his faint rays, and at her bidding shrinks:  
Such was the heaven-loved isle,

Than Lesbos fairer and the Cretan shore!  
No more shall freedom smile?  
Shall Britons languish, and be men no more?  
Since all must life resign,  
Those sweet rewards which decorate the brave  
'T is folly to decline,  
And steal inglorious to the silent grave.

### THE SCIENCE OF JURISPRUDENCE

"The great science of jurisprudence, like that of the universe, consists of many subordinate systems, all of which are connected by nice links, and beautiful dependencies; and each of them, as I have fully persuaded myself, is reducible to a few plain elements, either the wise maxims of national policy and general convenience, or the positive rules of our forefathers, which are seldom deficient in wisdom or utility. If law be a science and really deserve so sublime a name, it must be founded on principle and claim an exalted rank in the empire of reason; but if it be merely an unconnected series of decrees and ordinances, its use may remain, though its dignity be lessened, and he will become the greatest lawyer who has the strongest habitual or artificial memory. In practice, law certainly employs two of the mental faculties; *reason*, in the primary investigation and decision of points entirely new; and *memory*, in transmitting to us the reason of sage and learned men, to which our own ought invariably to yield, if not from becoming modesty, at least from a just attention to that object for which all laws are framed, and all societies instituted, the good of mankind."—*From his Essay on Bailments.*



## THE GREATEST MAN

"If I am asked, who is the greatest man, I answer, the best. And if I am required to say who is the best, I reply, he that has deserved most of his fellow creatures."

## THE PERPETUITY OF AMERICAN INSTITUTIONS

"The sum of my opinion is that while all the American people understand the modern art of war, and learn jurisprudence by serving in rotation upon grand and petit juries, their liberty is secure, and they will certainly flourish most when their public affairs are best administered by their Senate and Councils. I cannot think a monarchy or an oligarchy stronger in substance, whatever they may be in appearance, than a popular government. \* \* \* I shall not die in peace without visiting your United States for a few months before the close of the eighteenth century. May I find wisdom and goodness in your Senate, arms and judicature, which are power, in your Commons, and blessings of wealth and peace equally distributed among all."—2 *Wynne's Eunomus*, 359, note.

## WORKS OF CICERO

"No man ever perused the works of Cicero without improving in eloquence and wisdom."

## SHARSWOOD ON JONES

"Of English biographies there is no one, it occurs to me, better for a lawyer to read at frequent intervals, for the purpose of getting a vivid picture of a truly great mind, in the midst of the most stirring scenes, ever intent upon its own cultivation and advancement, as its only true glory than the Life of Sir William Jones, by Lord Teignmouth. It exhibits the wonders which unremitted study, upheld by the pure and noble ambition of doing good, can accomplish in the space of a short life. He was a man of the most varied knowledge. An extensive and, indeed, extraordinary acquaintance with ancient and modern languages was, perhaps, his chief accomplishment. Although he engaged very late in life in the study of the law, such was his industry and success that he soon occupied the highest judicial station in British India; and the profession is indebted to his pen for one of the most beautiful of the elementary treatises which adorn the lawyer's library. 'In his early days,' says his biographer, 'he seems to have entered upon his career of study with the maxim strongly impressed upon his mind, that whatever had been attained, was attainable by him; and it has been remarked that he never neglected nor overlooked any opportunity of improving his intellectual faculties, or of acquiring esteemed accomplishments.' Notwithstanding his numerous occupations at the Bar at home, the onerous duties of his station in India, and his premature death, before he had attained his forty-eight year, he has left behind many learned works, which illustrate Oriental languages, and history, and attest the extent of his labors and acquisitions. Indeed, it might be regarded as impossible, were we not informed of the regular allotment which he made of his time, to particular occupations, and his scrupulous adherence to the distribution he thus made. The moral character of this eminent man was no less exemplary. He had more virtues and less faults than I ever yet knew in any human being; and the goodness of his head, admirable as it was, was exceeded by that of his heart."

—*Sharswood's 'Legal Ethics,' 174-5.*



## HIS VERSATILITY

Few men have died more regretted, or whose loss to the world of letters was more deeply felt than Sir William Jones, who as a linguist has scarcely ever been surpassed. His acquaintance with the history, philosophy, laws, religion, science, and manners of nations, was most extensive and profound. It was by a persevering observance to a few principal maxims that he was principally enabled to accomplish what he did. One of these was, never to neglect an opportunity of improvement; another was, that whatever had been attained by others, was attainable by him, and that, therefore, the real or supposed difficulties of any pursuit formed no reason why he should not engage in it, and with perfect confidence of success.

"It was also," says Lord Teignmouth, "a fixed principle with him, from which he never voluntarily deviated, not to be deterred by any difficulties which were surmountable, from prosecuting to a successful termination what he had once deliberately undertaken. But what appears to me," adds his lordship, "more particularly to have enabled him to employ his talents so much to his own and the public advantage was the regular allotment of his time to particular occupations, and scrupulous adherence to the distribution which he had fixed; hence all his studies were pursued without interruption or confusion."

He mastered the Greek and Latin languages, Oriental tongues, Arabic, Italian, Spanish, Portuguese, French and German, and Persian. Wrote a life of Zoroaster, a pamphlet on 'Legal Mode of Suppressing Riots,' 'Essay on the Law of Bailments,' 'A Dialogue between a Farmer and a Country Gentleman on the Principles of Government;' for the publication of which the Dean of St. Asaph, afterwards his brother-in-law, had a bill of indictment preferred against him for sedition. He became judge in the Supreme Court of Judicature, Bengal, to which he was nominated in March, 1783, and knighted. He died in 1794, in his 48th year.—*Author.*

## A MASTER OF LANGUAGES,—JAS. FREEMAN CLARKE

"Sir William Jones was one of those who was well equipped, a born philologist, loving *words* for their own sake—'one who,' says Lord Bacon, 'have come forth from the second general course, which was the confusion of tongues, by the art of grammar.' Perhaps Sir William Jones was the greatest among these. A paper in his own hand-writing tells us that he knew critically eight languages—English, Latin, French, Italian, Greek, Arabic, Persian, and Sanskrit; less perfectly eight others—Spanish, Portuguese, German, Runic, Hebrew, Bengali, Hindi, Turkish; and was moderately familiar with twelve more—Tibetian, Pali, Phalavi, Deri, Russian, Syriac, Ethiopic, Coptic, Welsh, Swedish, Dutch, and Chinese.

There have been, perhaps, other scholars who have known as many languages as this. But usually they are crushed by their own accumulations, and we never hear of their accomplishing anything. Jones was not one of these 'deeply versed in books, and shallow in himself.' Language was his instrument, but knowledge his aim. \* \* \* As a lawyer, a judge, a student of natural history, his ardor of study was equally apparent."

—From '*Ten Great Religions*,' title '*Brahmism*', Vol. 1, 78-9.



FRANK B. KELLOGG (1856- ), Minnesota

### U. S. OWES COLUMBIA NOTHING

"Now let me state the issue at the outset. In 1903, after being authorized by Congress to do so, President Roosevelt negotiated a treaty with Columbia for the acquisition of French rights and the construction of the Panama Canal. The U. S. was to pay 10 million dollars and an annuity of one-fourth million dollars per annum. It was ratified by the Senate, but in Oct., 1903, the Columbian congress refused to ratify it, for reasons which I shall discuss. Thereupon, Panama revolted and set up a separate government, which we recognized according to the principles of international law, and which also was recognized by all the leading nations of the world, including substantially all the South American countries.

"We made a treaty with Panama for construction of the canal and paid her the same compensation we had previously agreed to pay Columbia. This action was ratified by the senate. The canal has been built and for seventeen years we have consistently, as a nation, made the claim that our action was entirely legal in this respect. Now, what is the position of Columbia?

"She claimed in 1903, and ever since has claimed, that the U. S. violated its treaty of 1846 with New Grenada to which she succeeded; that we failed to maintain the sovereignty of Columbia over Panama; that we violated the principles of neutrality by intervening with an armed force, and prevented Columbia from putting down the rebellion; and that we are responsible and should make reparation to Columbia for all the moral, physical and financial losses which she sustained by reason of her separation from Panama.

"This position she has reiterated from time to time. \* \* \* No man since Lincoln has exercised a greater influence than Roosevelt. He came nearer to knowing and sharing, in his daily life, the aspirations and motives which move the great mass of the people and work out the destiny of nations, than any man of his time. In his intercourse with other nations he was broad-minded, just, and ever jealous of the good name and the fame of his country, and when the impartial historian shall write the history of the Panama canal, I am confident of the verdict, and I shall not vote for any treaty which will place a lasting blot upon that name.

"Mr. President, the events of 1903, which led to the separation of Panama from Columbia, the making of the Panama treaty, and the construction of the canal have passed into history. That history is written in the records of the State Department in the correspondence between Columbia, Panama and the U. S., in the messages of the President and in the laws of congress. From an examination of the documents and this record I am convinced beyond question that this government did not violate its treaty with Columbia, did not instigate the revolution; had a perfect right to recognize Panama and enter the treaty for the canal concession and to acquire the French canal and complete the work, and that the title of the U. S. is good in law and morals. That title has been recognized by the civilized world, accepted by the congress and the American people, and now, after the lapse of nearly twenty years, we are asked to make reparation to Columbia for taking Panama."

—*In U. S. Senate, Apr. 13, 1921.*



## JAMES KENT (1763-1847), New York

### ROMAN COMMERCE

"The genius of the Roman government was military and not commercial. Mercantile professions were despised: nothing was esteemed honorable but the plow and the sword. They prohibited commerce to persons of birth, rank and fortune. Their navigation was for the purpose of war, and not of commerce."—*James Kent*.

### GRECIAN COMMERCE

"The universality and stability of the Greek tongue were owing largely to the conquests of Alexander, to the tenacity of the Greeks, and the inimitable excellence of the language itself; but it is mainly due to their commercial genius, and the colonies and factories which they established, and the trade and correspondence which they maintained throughout the then known parts of the Eastern world."—*James Kent*.

### VALUE OF A LIBRARY

"I began early to form a select and chosen library, and that object I have ever since kept steadily in view, and I have always found my library to constitute a great and essential source of felicity. It has been my mentor, my guardian genius, and has cherished in me a passion for letters which has literally grown with my growth and strengthened with my strength."—*Chancellor James Kent*.

### THE OLD REPORTS

"I have now finished a succinct detail of the principal reporters; and when the student has been thoroughly initiated in the elements of legal science, I would recommend them to his notice. The old cases, prior to the year 1688, need only to be occasionally consulted, and the leading decisions in them examined. Some of them, however, are to be deeply explored and studied, and particularly those cases and decisions which have spread their influence far and wide, and established principles which lie at the foundations of English jurisprudence. Such cases have stood the scrutiny of contemporary judges, and been illustrated by succeeding artists, and are destined to guard and control the most distant posterity. The reports of cases since the middle of the last century ought, in most instances, to be read in course, and they will conduct the student over an immense field of forensic discussion. They contain that great body of the commercial law, and of the law of contracts, and of trusts, which govern at this day. They are worthy of being studied even by scholars of taste and general literature, as being authentic memorials of the business and manners of the age in which they are composed. Law reports are dramatic in their plan of structure. They abound in pathetic incident, and displays of deep feeling. They are faithful records of those 'little competitions, factions, and debates of mankind' that fill up the principal drama of human life; and which are engendered by the love of power, the appetite for wealth, the allurements of pleasure, the delusions of self-interest, the melancholy perversion of talent, and the machinations of fraud. They give us the skillful debates at the bar, and the elaborate opinions on the bench, delivered with the authority of oracular wisdom. They become deeply interesting because they contain true portraits of the talents and learning of the



sages of the law. We should have known but very little of the great and varied accomplishments of Lord Mansfield, if we had not been possessed of the faithful reports of his decisions. It is there that his title to the character of 'founder of the commercial law of England' is verified. A like value may be attributed to the reports of the decisions of Holt, Hardwicke, Willes, Wilmot, DeGray, Camden, Thurlow, Buller, Kenyon, Sir William Scott, Grant and many illustrious names, which will be immortal as the English law. Nor is it to be overlooked as a matter of minor importance, that the judicial tribunals have been almost uniformly distinguished for their immaculate purity. Every person well acquainted with the contents of the English reports must have been struck with the unbending integrity and lofty morals with which the courts were inspired. I do not know where we could resort, among all the volumes of human composition, to find more constant more tranquil, and more sublime manifestations of the intrepidity of conscious rectitude. If we were to go back to the iron times of the Tudors, and follow judicial history down from the first page of Dyer to the last reporter, we should find the higher courts of civil judicature, generally, and with rare exceptions, presenting the image of the sanctity of a temple, where truth and justice seem to be enthroned, and to be personified in their decrees."—*James Kent—1 Commentaries, 486-497.*

This paragraph shows the Chancellor at his best, and is a fair sample of his grave and measured eloquence, his deep erudition, and kindly sympathy and human interest. He reaches his judicial conclusions after painstaking examination and study of the authorities.—*Author.*

#### C CERO

"Cicero was the greatest philosopher, scholar, and orator, take him all in all, of the ancient world."—*Written by Kent, when 31 years old.*

#### REFUSED TO SIGN PLEDGE

"Gentlemen, I refuse to sign any pledge. I never have been drunk, but I have a constitutional privilege to get drunk, and that privilege I will not sign away."—*Kent's reply to a Temperance Committee.*

#### PINKNEY

"Pinkney's talents were splendid, but his moral character was bad; he was wrapped up in himself and deemed himself great, without an equal. He cared for nothing but what contributed to his individual vanity and gratification. He modeled himself upon Cicero, and had his polished style, his art, his ambition as an actor, and his vanity. He was a perfect dandy in his dress, and devoted much to his dear person. He was brave and not vindictive, and upon the whole would make a sacrifice to gratify his love of self and of fame. He was destitute of the noblest qualifications, simplicity, modesty, generosity, purity, disinterestedness, and, in short, he was one of the 'brightest and meanest of mankind.'"

—*Judge Kent to H. Wheaton, 1826.*

#### TRIBUTE TO BLACKSTONE

"I owe my reputation to the fact that, when studying law during the War, I had but one book, 'Blackstone's Commentaries,' but that one book I mastered."—*Said by Kent.*

#### HAMILTON AS A LAWYER

"Mr Hamilton had an overwhelming share of the mercantile and insurance law of New York City, and though that bar could boast of



the clear intellect, the candor, the simplicity, the black-letter learning of the elder Jones, the profound and richly-varied learning of Harrison, the classical taste and elegant accomplishments of Brockholst Livingston, the solid and accurate, but unpretending common-law learning of Troup, the chivalrous feelings and dignified address of Pendleton, yet the mighty mind of Hamilton would at times bear down all opposition by its comprehensive grasp and strength of his reasoning powers. He taught us all how to probe deeply into the hidden recesses of the science, or to follow up principles to their far distant sources. He was not content with the modern reports, abridgements, or translations. He ransacked cases and precedents to their foundations, and we learned from him to carry our inquiries into the commercial codes of the European continent, and in a special manner to illustrate the law of insurance by the severe judgment of Emerigon, and the luminous commentaries of Valin. \* \* \* I have little doubt that if General Hamilton had lived twenty years longer he would have rivalled Socrates, or Bacon, or any of the sages of ancient or modern times in researches after truth and in benevolence to mankind."—*From Kent's memories of Hamilton to his widow, in 1832.*

### CHARGED WITH HYPOCRICY BY WIFE

On one occasion Judge Kent and his wife, Betsy, were walking. They met a man whom he disliked. After the Judge had greeted this man and said: "I am happy to meet you," and passed on, Mrs. Kent bantered him for "hypocrisy." "I was glad to *meet* him," said he, "but I should have been very sorry if he had been going our way."

At another time, a friend knowing his dislike for the New York politics of the Evening Post, expressed surprise to find him reading it. "Why not?" said he. "I want to know what the devil is doing in this world as well as the other people."

### TOASTS IN BOSTON TO KENT

In 1823, at a Phi Beta Kappa dinner, the toasts were on the chairman's instantaneous requisition. Judge Parker gave: "The happy climate of New York, where the moral sensibilities and the intellectual energies are preserved long after *constitutional* decay has taken place." Judge Story gave: "The State of New York, where the law of the land has been so ably administered that it has become the land of the law." Chancellor Kent instantly replied: "The State of Massachusetts, the land of Story as well as of song."

"I have never known any other man whose reading and study were so universal as his. \* \* \* He knew all about everything he had ever studied, and he had studied almost everything."

—*Said Benj. D. Silliman, in 1889, who read law with Judge Kent.*

### RIGHTS OF PERSON

"The absolute rights of individuals may be resolved into the right of personal security, the right of personal liberty and the right to acquire and enjoy property."

### JAS. KENT'S DEFINITION OF GOVERNMENT

"Government must be framed for man as he is, and not for man as he should be if he were free from vice."—*1 Kent's Commentaries, 305.*

### JUDGE DUER'S COMMENT

"The case of *Griswold v. Waddington* (15" and 16" Johnson's Reports) contains more elaborate and thorough investigation into the consequences



of a war, as affecting the relations, intercourse and contracts of the respective subjects of the hostile states, than is to be found in any other adjudicated case, or in any treatise on the subject, in our own, or in any foreign language. It is not merely a judicial opinion, but a most learned and exhaustive dissertation on this branch of national and municipal law, embracing a masterly and critical analysis of all the cases, and supporting every position by an irresistible force of argument and weight of authority. Like the famous treatise by Bynkershoeck on Public Law, it ought not to be transiently consulted; but by a diligent and repeated perusal, should be transfused into the mind of the student."

—*Duer's Discourses on Kent*, pp. 50-1.

KENT: James Kent administered equity so extensive and entire that with a single exception (that of Lord Nottingham) it has no parallel in legal history."

#### FREDERIC R. COUDERT ON SUCCESS AT THE BAR

"There is no royal road to success at the bar, nor are there, that I know of, rules of conduct that will furnish the aspirant to forensic honors with a passport to fortune. Success in the profession, as in every other pursuit, is the logical result of given premises that are common to all, the only difference being that our standard is higher than any other. If, however, I were called upon to illustrate a possible difference, I would say that the law differs from dry goods, stock jobbing or distilling whisky mainly in this, that the primary object of these is to make money. A profit is the direct, exclusive and objective point of the operator.

"In law, and, I may add, in medicine, art comes first. The lawyer who does not care more for the triumph of his cause than for his fee will not and should not succeed. The fee follows the triumph as the accessory the principal. The great mistake of the beginner is to look first at the accessory. The lawyer should love his business. If the law is a science, it is also an art. Daniel Webster, Rufus Choate, and Ogden Hoffman were as thorough artists in their way as Paganini or Thalberg or Patti. Nor does this view exclude thorough sincerity; on the contrary, the artist plays upon his instrument, whether a violin or a jury, all the better when his heart is in the work.

"The lawyer who starts with the idea that honesty is the best policy, and who is therefore honest, is unworthy to take high rank in his profession. Honesty may or may not be the best policy, but he will certainly find instances where he thinks it is not. I entertain real compassion for the youth who practices law on that theory. He was intended for something else. He should try the business of—I shall not make invidious distinction by specifying. I shall end with a precept worth its weight in gold. Do not allow yourself to be handicapped at the start. Competition will not permit the extra weight. You are handicapped if you think you are a genius not bound to drudgery; or if you have a habit that you cannot control, overcome, stamp out and laugh at. If you need a cigar after your lunch or a cocktail before your dinner; if you cannot retire at a respectable hour in the evening; if you cannot reach your office betimes in the morning or you love some other business better than your own, and find irresistible music in the ticker of the Stock Exchange, close your office and consult a phrenologist—you will never take a front rank. That shock-headed, rough-looking little fellow who sweeps out your office and plods at a Blackstone at night carries lighter weight than you do, and will go by the winning post while you are tightening your saddle girths."—*Letter to N. Y. Herald*, March 8, 1891.



## LORD LLOYD KENYON (1732-1802), England

### THE BUTLER DENOUNCED FOR STEALING WINE

"Prisoner at the bar, you stand convicted, on the most conclusive evidence, of a crime of inexpressible atrocity—a crime that defiles the sacred springs of domestic confidence, and is calculated to strike alarm into the breast of every Englishman who invests largely in the choicer vintages of Southern Europe. Like the serpent of old, you have stung the hand of your protector. Fortunate in having a generous employer, you might, without dishonesty, have continued to supply your wretched wife and children with the comforts of sufficient prosperity and even with some of the luxuries of affluence; but dead to every claim of natural affection, and blind to your own real interest, you burst through all the restraints of religion and morality, and have for many years been feathering your nest with your master's bottles."

—*Lord Lloyd Kenyon, Eng. (1732-1802.)*

Born in Wales, died in Bath, England. He was Chief Justice of England, 1788-1802; was deeply learned in law, and profoundly ignorant of everything else; his intimate companions were Dunning, Erskine, and Horne Tooke; left a fortune of 200,000 pounds, or a million dollars; was domineering as a judge; was parsimonious, so much so that after his death, a hatchment was put on his house, with the motto painted by mistake, *Mors Janua vita*. Eldon insisted that Kenyon so ordered it to save the extra expense of the final diphthong.

### NOT A POPULAR ADVOCATE

Kenyon was never a popular or successful advocate, but he made \$15,000 a year by answering cases.

### MUST BE POOR TO STUDY LAW

Kenyon said to a rich friend, whose son was to study law: "Sir, let your son forthwith spend his fortune, marry and spend his wife's, and then he may be expected to apply with energy to his profession."

—*Morrison's Life of Jeremiah Smith, 378.*

### PRACTICAL WAY TO LEARN LAW

When Lord Kenyon was Chief Justice of England there used to be a box for the law students close to the bench, and the Judge would show them the pleadings and explain their effect.

—*Lord Campbell's Life of the Chief Justices.*

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## THOMAS JEFFERSON ON ENTANGLING ALLIANCES WITH EUROPE

"I have ever deemed it fundamental for the United States never to take active part in the quarrels of Europe. Their political interests are entirely different from our own. Their mutual jealousies, their balance of power, their complicated alliances, their forms and principles of government are all foreign to us. They are nations of eternal war. America has a hemisphere to itself. It must have its separate system of interests, which must not be subordinate to those of Europe."—*Thomas Jefferson.*



## RUFUS KING (1755-1827), New York

### AS A LEGISLATOR AND DEBATER

"All who have had an opportunity of witnessing any important discussion in the Senate, in which Mr. King has taken part, have almost universally assigned him the palm. His talents are spoken of in more exalted terms, even by his political opponents, than any other member of that body, and we do not think it would be too much to say, that he is superior at this time (1813), to any other man of which the United States can boast. Bred up in the service of his country, and guided by the strictest integrity, he has justly acquired a reputation which entitles him to the confidence of his fellow-citizens. With such a man at the head of our government, we might soon expect to witness a change in the gloomy aspect of the affairs, and that scene of prosperity again restored which formerly spread its blessings around us. For many years he has lived in the retirement of private life, and his talents when greatly required, have been lost to his country. But since all parties now unite in speaking his praise, it is sincerely to be wished that his councils may produce that effect which they so eminently deserve. If ever there is a time when honest men come again into fashion, it will be the pride of our nation to have a statesman like him to direct its affairs. But as long as the people are controlled by those wild opinions which seem now to actuate them, they never will be able to distinguish between their real and pretended friends.

"The only hopes that can be entertained at present are that those sufferings, which they have already experienced and those which yet await them, will learn then to discriminate between those who look at their best interests, and those who pursue the idle phantoms of a distempered imagination."

—*From the Md. Gazette, July 16, 1813, Vol. 5, King's Life and Correspondence, 321.*

### HAMILTON'S TESTIMONY AS TO KING

"Mr. King is a remarkably well informed man, a very judicious one, a man of address, a man of fortune and economy, whose situation affords just ground for confidence; a man of unimpeached probity, where he is best known, a firm friend of the government, a supporter of the measures of the President; a man who cannot but feel that he has strong pretensions to confidence and trust."—*Hamilton in letter to Washington, 1796.*

### KING AS AN ORATOR

"To Mr. King it was assigned to answer Aaron Burr, if he should take part in the debate. Otherwise he was not to speak. Mr. Burr did not rise to address the chair until the President had proceeded half way in putting the question; and then commenced and went through a discourse of considerable ingenuity. When he had finished, Mr. King immediately replied; and it is said to have displayed his talents as an orator more powerfully than on any other occasion during his whole life. An able judge of eloquence, and one of the first men of our country, represents the exhibition as transcending anything that modern, if not ancient times, ever produced. He says the orator worked himself up into such a fervor, that he leapt from the floor; and that, extravagant as this action may now appear, it was no more than the 'action suited



to the word.' \* \* \* Of late years it has been observed that Mr. King has with the animation of his manner given place to a more calm and dignified moderation."

—*From Delaplaine's Repository—Vol 1, 184; also 1 King's Life and Cor., 532.*

## KING ON GREAT BRITAIN CONTROLLING THE MERCHANT MARINE OF THE WORLD

"We have moreover passed a navigation law that, after September, closes our ports against British vessels coming from British ports closed against American vessels. This is a strong measure, but called for, as I believe by a just regard for American navigation. We are independent of Great Britain for supplies of sugar, coffee; rum, etc. Whether she be alike independent of us for livestock, provisions, bread-stuffs, timber, lumber, staves, and heading is to be now ascertained. Perhaps the ports of Bermuda and the Bahamas, which are open to us, may still enable the English ships to carry on a disproportionate share of this intercourse; if so, we must go further when we see the operation of the new law. It must be made effectual so far as to secure to us an equal share at least of the navigation. If England still continues to say that we have nothing to give her for admitting out money and ships in her East Indies, we may say in return: be it so if you think so; but if you will not allow us to go and buy your East India fabrics, we will not allow them to be brought by you to our country, nor indeed will we allow them to be used or consumed by our people; in a word, the letter and spirit of the law (which passed with great unanimity, and which never at any former time would have passed at all), closed our ports against British vessels from any British port or place closed against American vessels.

"I gave all my heart and all my strength, with all my hopes of success to this measure, which in principle is incomparably the most important law ever passed on this, and perhaps on any other subject. England, at this day, by the extension of her commercial stations throughout the world, and the application of her navigation law to this extension of dominion, has effectively monopolized a great portion of the navigation necessary to carry on the commerce of the world. As respects others she is now more disproportionately in possession of the general commerce of nations than the Dutch were in the middle of the seventeenth century; and our laws must check her, as her navigation laws have checked and broken down the Dutch. Don't understand that I expect or desire any breaking down of England; but I do hope that, if faithful to ourselves, we shall oblige England to let us in for a fair share of the general trade carried on between the nations of the earth."

—*From letter to Jeremiah Mason, Apr. 21, 1818. 'Clark's Reproduction of the Memoir, etc., of Jeremiah Mason,' 197-8.*

## JEREMIAH MASON'S OPINION OF KING

Rufus King, whom Mason thought the most able man and the greatest orator he had ever known, Webster relates, that while in Mr. Christopher Gore's office in Boston, a gentleman came in and asked to see Mr. Gore, who was not in. He sat down to wait for him. He was dressed in plain gray clothes. Webster was reading a work on the Law of Nations, which had much to say of ships and freight, etc. The stranger coming up to the table said: "Well, I read that book, too, when I was a boy." (Mr. King, for this was the stranger's name, was then 50), and says Webster, proceeded to talk not only about ships and freights, but insurance, prize, and other matters of maritime law, in a manner, to put me up to all I knew, and a good deal more.

—*See Webster's Autobiography, 19; and 'Clark's Reproduction of the Memoir, etc., of Jeremiah Mason,' note b, 57.*



## FEDERAL AND STATE POWER

"Rome in former times was the seat of a great central power, which reached to her remotest provinces, and the life, liberty and property of the citizens were everywhere held at the mercy of this power. Paris, in our own time, has also been the seat of a great central power, which extended over all parts of France, and, acting upon the people in all their towns and villages, punished opposition to its mandates, and whatsoever were deemed errors in political opinion, with confiscation of property, and loss of life.

"These remarks are not to be answered by a reference to the practice of the State Legislatures. Conferences and meetings among the members of those local bodies, to agree upon measures in reference to state policy, are not liable to the same objections. Their influence is less powerful, and they operate within more limited spheres, and the members are more responsible for their political acts, as well by the greater frequency of state elections, as by the scene of their political operations being nearer to the supervision and inspection of their constituents. Neither are there the same constitutional objections arising from the inequalities of the states and from our federative and balanced system of government."

"It was to protect the states from this great central power that, instead of concentrating power in one place, the Constitution has provided for the division and distribution of it throughout and among the states. By adhering to this division and distribution of power, tho we find our government less simple, more expensive and less magnificent, we may rationally hope to preserve our political integrity, and to perpetuate our liberties.

"There are apparent defects in our Constitution. We have nevertheless, increased and prospered under it. If these defects were cured, the very means which should effect the cure may introduce, as has happened, other and greater defects, especially when these alterations are made in the midst of political excitement, and without opportunity of regarding all the evils connected with the remedial amendments.

"All that is the work of man, is like him, imperfect. We probably enjoy a greater portion of freedom and happiness than falls to the lot of other nations; and, because we desire yet more, we must be careful not to lose what we have, by hasty and partial alterations in our plan of government. I would, therefore, prefer to adhere for the present to the Constitution as it is, in hopes that adequate means may be devised to suppress this great and alarming central power, which is now oppressing the Constitution itself, by controlling and superseding its wise and well-considered provisions."—*In U. S. Senate, March 18, 1824.*

Mr. King was an American political leader, member of the Constitutional Convention of 1787, defender of the Jay Treaty of 1794, opponent of slavery, Vice-Presidential candidate of the Federalists in 1804 and 1808, and candidate for President in 1816. He read law with Theophilus Parsons, and became prominent as a lawyer and political leader.



J. PROCTER KNOTT (1830-1911), Kentucky

## DULUTH

"I was utterly at a loss to determine where the terminus of this great and indispensable road should be, until I accidentally overheard some gentleman the other day mention the name of '*Duluth*.'"

"*Duluth!* the word fell upon my ear with a peculiar and indescribable charm, like the gentle murmur of a low fountain stealing forth in the midst of roses; or the soft, sweet accents of an angel's whisper in the bright, joyous dream of sleeping innocence.

"*Duluth!* 'Twas the name for which my soul had panted for years, as the hart panteth for the water-brooks. But where was *Duluth*? Never in all my limited reading had my vision been gladdened by seeing the celestial word in print, and I felt a profound humiliation in my ignorance that its dulcet syllables had never before ravished my delighted ear. I was certain the draughtsman in his bill had never heard of it or it would have been designated as one the termini of this road. I asked my friends about it, but they know nothing of it. I rushed to the library and examined all the maps I could find. I discovered in one of them a delicate hair-line, diverging from the Mississippi near a place marked Prescott, which, I supposed, was intended to represent the river St. Croix, but could nowhere find *Duluth*. Nevertheless, I was confident it existed somewhere, and that its discovery would constitute the crowning glory of the present century, if not of all modern times. I knew it was bound to exist in the very nature of things; that the elements of maternal nature would since have resolved themselves back into original chaos if there had been such a hiatus in creation as would have resulted from leaving out *Duluth*! In fact, sir, I was overwhelmed with the conviction that *Duluth* not only existed somewhere, but that wherever it was, it was a great and glorious place. I was convinced that the greatest calamity that ever befell the benighted nations of the ancient world was in their having passed away without a knowledge of the actual existence of *Duluth*; that their fabled Atlantis, never seen save by the hallowed vision of the inspired poesy, was, in fact, but another name for *Duluth*; that the golden orchard of the Hesperides was but a poetical synonym for the beer-gardens in the vicinity of *Duluth*. I was certain that Heroditus had died a miserable death, because in all his travels and with all his geographical research he had never heard of *Duluth*. I knew that if the immortal spirit of Homer could look down from another Heaven than that created by his own celestial genius upon the long lines of pilgrims from every nation of the earth to the gushing fountain of poesy opened by the touch of his magic wand, if he could be permitted to behold the vast assemblage of grand and glorious productions of the lyric art called into being by his own inspired strains, he would weep tears of bitter anguish that, instead of lavishing all the stores of his mighty genius upon the fall of Illion, it had not been his more blessed lot to crystalize in deathless song the rising glories of *Duluth*. Yes, sir, had it not been for this map, kindly furnished me by the legislature of Minnesota, I might have gone down to my obscure grave in an agony of despair, because I could nowhere find *Duluth*. Had such been my melancholy fate, I have no doubt that with the last feeble pulsation of my breaking heart, with the last faint exhalation of my fleeting breath, I should have whispered, 'Where is *Duluth*?'"

—J. Proctor Knott—Extract from his speech in the H. of R., Washington, D. C., on The St. Croix and Superior Land Grant, Jan. 21, 1871.



He was born near Lebanon, Ky., 1830; practiced law in his native State and Missouri; was Attorney-General and Governor of Ky.; Democratic Member of Congress, '67-'71; member of the Constitutional Convention of Ky.; Dean of the Law Faculty ('94-'01), of Centre College, at Danville, Ky.

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### ROGER WILLIAMS—'RELIGIOUS LIBERTY'

"Roger Williams was a hero in the highest sense of that much-abused word. Of all the men that ever mingled in the good fight for freedom of opinion, he carried the most glittering weapon, fought the hardest battle, and won the most brilliant triumph. Single-handed and alone he strove against a tumultuous throng of enemies who pressed upon him in front, in flank and rear. And never yet was a hero so magnanimous in victory, or in adversity so calmly steadfast to his cause. His character is invested with that peculiar interest which we all feel in a great injured man, whose merits are the glory, while the wrongs he suffered are the shame of the times he lived in. His intellectual vision saw the truth at a glance, and his honest heart accepting it without hesitation, pushed it at once to its ultimate consequences. His eloquence was remarkable for its clearness and fervor; he had a steadiness of purpose which opposition only made firmer, and no danger that ever thickened around him could tame the audacity of his courage. Thus gifted he came to Massachusetts in the vigor of his early manhood, and immediately took up the defense of what he called 'sanctity of conscience.' It would have been a safer employment to denounce Mohammedanism in any part of Turkey. Mary Fisher made a fair trial of both. She went to Boston and she went to Constantinople. She publicly administered to the Sultan and to the elders of the Puritan church the rebuke which in her opinion was needed by each; and her report of the comparative treatment she received gives a decided preference to the Turks. The intrepid spirit of Williams, however, was not to be quelled; his denunciation of tyranny became unsparing in proportion as the threats against himself grew louder. Such a man could not fail to have friends among the people; but those who wielded the political power of the ecclesiastical influence of the colony were against him in a compact body, and hated him with that bitter intensity of hatred which religious bigotry alone can inspire."

—*Jeremiah S. Black, on 'Religious Liberty,' at Pennsylvania College, Sept. 17, 1856.*

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### A VIVID CONTRAST

When Philander C. Knox, late Attorney-General of the United States, went to Washington, he received a bit of good-natured chaff from his colleagues in the Cabinet by reason of his diminished stature. One day he was telling Shaw, Secretary of the Treasury, of a sight-seeing trip.

"Do you know," said he, "that until this present trip to the Capital, I never had visited the Washington Monument. Well I slipped down to say I had a look at it. I had my photo taken while standing at the base of the shaft." "How did the monument stand the contrast?" queried Shaw.

"Really, it didn't present so insignificant an appearance as you might imagine," responded the Attorney-General.—*The Author.*



## L. Q. C. LAMAR (1825-1893), Mississippi

### PUBLIC SPEAKING

"Never attempt to speak when you are not prepared. I try not to speak, unless I am prepared. I don't write my speeches; my practice is, after preparing a speech, after having determined what subjects to discuss, to frame my sentence in my mind; to turn each sentence over and over until I get it in shape to suit me, and then to repeat it to myself until it is thoroughly impressed on my mind, and then to go on to the next sentence; so that when I am through with my preparation, I not only know what I am going to say, but the very gesture that will accompany every word of it. You will find it difficult at first to do that, but you can soon train yourself to it."

Lamar had the most famous tilt with Blaine in the United States Senate known to that body.

"If the Senator from N. Y. accuses me of bad faith, I say to the Senator from N. Y. he is guilty of a falsehood, and I repel it with all the contempt I feel for the author."—*Lamar*.

"Should the Senator from Miss., in the presence of the Senate, charge me by intimation with telling a falsehood, I would denounce him as a black-guard, a coward, and a liar."—*Blaine*.

"I have only to say to the Senator from N. Y., he understood me correctly. I said precisely the words he understood me. I beg pardon of the Senate for it; my language was such as no good man would deserve, and no brave man would wear."—*Lamar*.

### SLAVERY DEAD

"Sir, the Southern people believe that conquest has shifted the Union from the basis of compact to that of force. They fully recognize the fact that every claim to the right of secession from the Union is extinguished and eliminated from the American system and no longer constitutes a part of the apparatus of the American government. They believe that the institution of slavery, with all its incidents and affinities, is dead, extinguished, sunk into a sea that gives not up its dead. They cherish no aspirations nor schemes for its resuscitation. With their opinions on the rightfulness of slavery unchanged by the events of the war, yet as an enlightened people accepting what is inevitable, they would not, if they could, again identify their destiny as a people with an institution that stands antagonized so utterly by all the sentiments and living forces of modern civilization."

### REPLY TO GEO. F. HOAR

"Now, sir, I do not wish to make any remarks here (U. S. Senate) that will engender any excitement or discussion, but I say that the Senator from Massachusetts connected that name (Jefferson Davis) with treason. We all know that the results of this war have attached to the people of the South the technical crime of rebellion, and we submit to it: but that was not the sense in which the gentleman used that term as applied to Mr. Davis. He intended to affix—I will not say he intended—but the inevitable effect of it was, to affix upon this aged man, this man broken in fortune, suffering from bereavement—an epithet of odium and imputation of moral turpitude. Sir, it required no courage to do that; it required no magnanimity to do it; it required no courtesy. It only required hate, bitter, malignant, sectional feeling and a sense of



personal impunity. The gentleman, I believe, takes rank among Christian statesmen. When Prometheus was bound to the rock it was not an eagle—it was a vulture—that buried its beak in the tortured vitals of the victim.”—*J. Q. C. Lamar, on a Mexican Pension Bill.*

### ENCOUNTER WITH CONKLING

LAMAR: “With reference to the charge of bad faith that the Senator from N. Y. has intimated toward those of us who have been engaged in opposing these motions (the Army Bill) to adjourn, I have only to say that if I am not superior to such attacks from such a source, I have lived in vain. It is not my habit to indulge in personalities, but I desire to say here to the Senate that in intimating anything inconsistent, as he has done, with perfect good faith, I pronounce his statement a falsehood, which I repel with all the unmitigated contempt that I feel for the author of it.”

CONKLING: “Mr. President, I was diverted during the commencement of the remark, the culmination of which I heard from the member from Mississippi. If I understand him right, he intended to impute and did in plain and unparliamentary language impute, to me an intentional misstatement. The Senate does not disclaim that I understand the Senator from Mississippi to state in plain and unparliamentary language that the statement of mine to which he referred was a falsehood, if I caught the word aright. Mr. President, this not being the place to measure with any man the capacity to violate decency, to violate the rules of the Senate, or to commit any of the improprieties of life, I have only to say that if the Senator—the member from Mississippi—did impute, or intended to impute to me a falsehood, nothing except the fact that this is the Senate, would prevent my denouncing him as a blackguard and a coward. Let me be more specific, Mr. President. Should the member from Mississippi, except in the presence of the Senate, charge me by intimation, or otherwise, with falsehood; I would denounce him as a blackguard, a coward, and a liar! And understanding what he said as I have, the rules and proprieties of the Senate are the only restraint upon me.”

LAMAR: “Mr. President, I have only to say the Senator from New York understood me correctly. I did mean to say just precisely the words, and all that they import. I beg pardon of the Senate for the unparliamentary language. It was very harsh; it was very severe; it was such as no good man would deserve, and no brave man would wear.”

—*In U. S. Senate, 1879.*

### ENCOUNTER WITH STANLEY MATTHEWS, U. S. SENATE, 1878

“There was another—Jefferson Davis—Mr. President; shall I not be permitted to mention his name in this free American Senate, which has been so free to discuss and condemn what it has adjudged to be his errors? One who has been the vicarious sufferer of his people, the solitude of whose punishment should lift him above the jibe and jeer of popular passion; but whose words will stand forever upon the record of history; not defiance, not in triumph, but in the sad and grand memoranda of the earnest spirit, the lofty motives of the mighty struggle which, however mistaken in its ends and disastrous in its results, was inaugurated by those who believed it to be in the interest of representative liberty and constitutional government.”

“Lamar was very many-sided and accomplished, the most interesting and lovable of men, very much at home in European courts, especially in that of England. He was a man among men and a lion among clever women. \* \* \* I rather think that he was the biggest brained of all



the men I have met in Washington. He possessed the courage of his convictions. A doctrinaire, there was nothing of the typical doctrinaire, or theorist, about him. He really believed that cotton was king, and would compel England to espouse the cause of the South."

—2 *Henry Watterson's Autobiography*, 18-21.

## PEN-PICTURE OF LORD BROUGHAM

"No man ever commanded the applause of listening senates, or could better rouse the depths of popular enthusiasm. His boundless command of language, his audacity, his memory, his animal spirits and social powers, gave him the lead everywhere. His striking, grotesque appearance added to the effect of his voice and manner; a tall disjointed frame, strong bony limbs and hands; strange angular motion of his arms; the incessant jerk of his harsh but expressive features; the exquisite modulations of his voice, now thundering in the loudest tones of indignation, and now subdued to a whisper which penetrated to the very walls of the House of Commons, and riveted the attention of the audience; a power of mingling tenderness and scorn, argument and invectiveness, all contributed to give him the magical influence a great actor exerts over a crowded theatre.

"Yet in the midst of his triumphs, the companions of his early life and those best acquainted with his character, knew that his extraordinary gifts did not include all the elements of true greatness. He wanted the moral elevation, which inspires confidence and respect; more essential than genius to the highest achievements and the most lasting fame. At times his eccentricity rose to the verge of insanity, as if the reins by which he guided his fiery temper, which had slipped from his hand. At the bar were greater and better advocates; on the bench were more sure and learned judges; in science he made no real discoveries; in letters, notwithstanding the prodigious activity of his pen, he has left no work of lasting celebrity; and although as an orator he was, in the best days, unequaled, he himself outlived the evanescent glories of his eloquence.

Hence it has come to pass, within fifty years of his most brilliant period, and within ten of his death that the figure of Brougham has become somewhat indistinct. The generation which was fascinated by his eloquence and aroused by the endless coruscations and evolutions of his character is passing, and has become difficult to preserve a faithful record of so strange and wonderful a phenomenon. That which remains and must ever remain as the noblest memorial of his life, is his unvarying adherence to the progress of liberal opinions, to the reform of the law, to popular education, to the emancipation of the negro race from slavery, and to the maintenance of peace. In this sense, he was, as he was once portrayed by an accomplished caricaturist of the day, a citizen of the world. Of every human right, Brougham was a champion; of every human wrong, an avenger."

—*Henry Reeve, 9th ed. Britannica, Vol. 4, p. 373.*



## FRANKLIN K. LANE (1864-1921), California

### A VIEW OF DEATH

"It is Wednesday afternoon and I am now sitting up in bed talking to my good friend Cotter. Until yesterday I did not clearly visualize any one thing in this room and did not know that it had a window except that there was a place that noise came through, but I did not know that it had a yellow oak door that stared at me with its great big square eye all day and all night. Last Friday about 10 in the morning, I took the step that I should have taken months ago, yes, years ago. Today, tentatively, I crawled onto a chair and ate my first mouthful of solid food. But four days ago I managed to shave myself and I am regarded as pretty spry.

"I have seen death come to men in various ways, some rather novel and Western. I once saw a man hanged, and I have seen several men shot, and came very near going out that way myself two or three times, but always the other fellow aimed poorly. I was being shot at because I was a newspaperman, and I should have been shot at. There must be public concern in what is printed, as well as its truth, to justify it. That is something that newspapers should get to know in this country. After the earthquake in San Francisco I saw walls topple out upon man. And I have had more intimate glimpses still of the picturesque and of the prosaic ways by which men come to their taking off.

"But never before have I been called upon to deliberately walk into the valley of the shadow, and say what you will, it is a great act. I have said during the past months of endless examination, that a man with little curiosity and little humor and a little money, who was not in too great pain, could enjoy himself studying the ways of doctors and nurses as he journeyed the invalid's path. It was indeed made a flowery path for me, as much as any path could be in which a man suffered more humiliation and distress and thwarting and frustration, on the whole, than he did pain.

"But here was a path, the end of which I could not see, was not compelled to take it. My latest doctor advised me against taking it. I could live some time without taking it. It was a bet on the high card with a chance to win and I took it. For two days I had knowledge that this operation was to take place at this time and my nerves had not been just as good as they should have been. Those men who sleep twelve hours perfectly before being electrocuted have evidently led more tranquil lives than I have or have less concern as to the future. Ah, now I was to know the great secret! For forty years I had been wondering, wondering. Often I had said to myself that I should summon to my mind when this moment came some words that would be somewhat a synthesis of my philosophy. Socrates said to those who stood by after he had drunk the hemlock 'no evil can befall a good man whether he be alive or dead.' I don't know how far from that we have gone in these 2,400 years. The apothegm, however, was not apposite to me, because it involved a declaration that I was a good man, and I don't know anyone who has the right to so appropriate himself, and I had come to the conclusion that perhaps the best statement of my creed could be fitted into the words, 'I accept,' which to me meant that if in the law of nature my individual spirit was to go back into the great ocean of spirits my one duty was to conform. 'Lead kindly light' was all the gospel I had. I accepted."

—Said by Secretary of the Interior for 7 years under President Wilson, just before his death at the hospital, Rochester, Minn., May 18, '21.



## THE PIONEER

"The pioneer tracked through the yielding treacherous snows; forded swift-running waters; crept painfully through rocky gorges where Titans had been at play; clambered up mountain sides, the sport of avalanche and of slide; dared the limitless land without horizon; ground his teeth upon the bitterest dust of the desert; fainted beneath the raw and ruthless sun; starved, thirsted, fought, was cast down but never broken, and he never turned back. Here he stands at last beside this Western sea the incarnate soul of his insatiable race—the American pioneer.

\* \* \* His sons are they who have cut these continents in twain, who have slashed God's world as with a knife, who have gleefully made the rebellious seas to lift man's ships across the barrier mountains of Panama. This thing the sons of the pioneer have done—it is their prayer a thing done for man. And here on this spot this pioneer had called his son to speak with modesty as is becoming in a strong man, of many things done; how they have filled the night with jewelled light conjured from the melting snows of the far off mountains; how they talk together across the world in their own voices; how they baffle the eagles in their flight through the air and make their way within the spectral gloom of the soundless sea; how they reach into the heavens and draw down food out of the air to replenish the wasted earth; how with the touch of a knife they convert the sinner and with the touch of a stone dissolve disease.

\* \* \* In blue and gold, in scarlet and purple, in the green of the shallow sea and the burnt brown of the summer hill-side, he has made the architecture of the centuries to march before their eye in column, colonnade and court. Athens and Rome are not far memories to the pioneer."

—*Franklin K. Lane in Address at Opening of San Francisco Exposition, Feb. 20, 1915. One of the notable addresses of American History.*

## JUDGE J. M. WAYNE ON WEBSTER

Webster visited Savannah, in 1847. Hon. J. M. Wayne, one of the judges of the Supreme Court, welcomed him. His address contains the following paragraph, illustrative of Mr. Webster's influence before the most august tribunal in the Union. Judge Wayne thus addressed him:

"When the late Thomas Gibbons determined to hazard a large part of his fortune in testing the constitutionality of the laws of New York, limiting the navigation of the waters of that state to steamers belonging to a company, his own interest was not so much concerned as that of the right of every citizen to use a coasting license upon the waters of the United States, in whatever way his vessel was propelled. It was a sound view of the law, but not broad enough for the occasion. It is not unlikely that the case would have been decided upon it, if you had not insisted that it should be put upon the broader constitutional grounds of commerce and navigation. The court felt the application and force of your reasoning and it made a decision releasing every creek and harbor, river and bay in our country from the interference of monopolies, which had already provoked unfriendly legislation between some of the states, and which would have been as little favorable to the interests of Fulton as they were unworthy of his genius."—*Harvey's 'Reminiscences of Webster,' 143.*



HUGH S. LEGARE (1789-1843), South Carolina

### ORATORY

"Considering as we do the masterpieces of this great orator (Demosthenes) as the true and only models of popular eloquence—as its *beau idéal*—not Greek, nor Attic, not ancient, not local or transitory, or peculiar as Lord Brougham vainly imagines them to be, but made like Apollo or the Parthenon for all times and all nations, and worthy of study and imitation wherever genius shall be called to move masses by the power of the *living word*, we know not how we can do anything more pitiable or more acceptable to our readers, than to fix their attention, for a few moments, upon the excellencies which distinguish him beyond every other orator that has ever appeared in any period of the world's history."—*Hugh Swinton Legare, 1 Writings of Legare, p. 444.*

### MILTON

"Milton's poetry is addressed to the learned. It bears upon every line of it the impress of vast erudition and consummate art. It is true he is the greatest master of the sublime that any language has to boast of—greater than Shakespeare—greater than Dante—greater than Homer. But it requires study and reflection, objects of comparison and a competent familiarity with literature, to perceive the amazing magnitude of this glorious orb. A vulgar eye might glance over him a thousand times and still mistake his 'ocean of flame' for a star of an inferior class. This is a great obstacle to his popularity, and it is one not less formidable but he is deficient in pathos and in topics of general interest."

—*Hugh S. Legare (1789-1843), S. C., in review of Thos. Moore's Life and Letters of Lord Byron, 2 Legare's Writings, p. 407.*

### LORD MANSFIELD

"Mansfield invented nothing. He was called upon to expound the contracts of merchants, and he did so with the assistance of special juries at Guildhall by the lights of *jus gentium*." He had before him, besides the monuments of ancient civil law, and the learning of the commentators the French *ordonnance de la marine*, and the commentary of Valin, and he did no more than sanction by authority of judicial decision, and accommodate, in some few instances, to the usages of his own country, the principles which he found developed in those great depositories of wisdom and equity."—*Legare's Review of Kent's Commentaries, 2 Writings, 109.*

### BLACKSTONE

"Even Blackstone, with all his prepossessions in favor of whatever is English, admits that before his time 'the theoretical, elementary parts of the law had received a very moderate share of cultivation,' and although his own Commentaries have abridged the studies of professional men, and made a certain knowledge of legal principles accessible to mere amateurs, yet we think that they have by no means superseded the necessities of future labors in the same vineyard. There is, in spite of all the pompous eulogies that have been passed on that work, a great deal of justness in Horn Tooke's remark, that 'it is a good gentleman's law-book, clear, but not deep.' The truth is, that 'the learned commentator' was anything but an original or philosophical thinker. He



has done nothing more than fill up the outline sketched by Sir Matthew Hale (this was the opinion of Thos. Jefferson and John Austin)."

—*Legare's Review of Kent's Commentaries, 2 Writings, 110-11.*

### CHIEF JUSTICE MARSHALL

"Although the great man who presides over the Supreme Court of the U. S. (this was written in 1826) does not indeed display the same exquisite elegance and felicity of diction that Lord Stowell does, but he is second to no judge that ever lived, in some of the most important attributes of judicial character; in depth and comprehensiveness of expression, in a logic, which in general (for, alas even Judge Marshall has erred), is proof against all sophistry and against which no sophistry is proof in a word, in large, sound, pervading good sense, which is satisfied only with the fullest and fairest views of a subject, but which, where it is once satisfied seldom fails to impart its own convictions to others."

—*Legare's Reviews of Kent's Commentaries.*

### LORD STOWELL

"Lord Stowell abounds in so many charms and graces that his decrees deserve to be cited as models of style and will bear comparison with the most finished compositions of our English classics at the same time it is difficult to treat such subjects with greater ability and accumen or with more enlarged philosophy."—*Legare's Review, Kent's Commentaries.*

### JOHN C. CALHOUN

"Calhoun's theory is ended in fanaticism. Nullification is, with him, it seems, what the French called in *indee fixe-a monomania*, in short, he is *quoad hoc* (to this extent), stark mad; just as H. (probably Hayne) is, and one or two more of their leaders. It is really lamentable to think that Calhoun's pre-eminent abilities as a politician have been so woefully misapplied. There is nobody to be compared with him in the management of men and affairs, in mere discussion he is not equal to Webster, whose genius besides has a beauty and elegance that the other is quite destitute of. I have no hesitation in saying, however, that he is by far the fittest man in the country for the presidential chair, and that, even now, I have no doubt, power would cure him of his metaphysical delusions as it did once before."

—*Legare's private correspondence, Brussels, Belgium, Dec. 15, 1834. 1 Writings, 217.*

### TASTES, CHARACTER AND PASSIONS DECIDE OUR DESTINY

"No man is free to dispose of himself according to his enlightened judgment. Our tastes, character, our ruling passions, these are our destiny."

—*Legare's letter to A. Huger, from Brussels, Dec. 15, 1834. Writings, 217.*

### THE FRENCH

"If liberty consists in a readiness to rush into scenes of blood and outrage, in the ferocity of a Tartar horde, thirsting for plunder and conquest, in rudeness of manners, violence of passions, and the most concentrated, impenetrable, conceited *egoisme*, in wearing mustachios and red pantaloons, and elbowing women into gutters that bound the sidewalks, then the French are a free people; but according to my old-fashioned notions of liberty, they are at this moment more unfit to be citizens of a republican country than they were in '93. They think of nothing and desire nothing



but war and sensual pleasures. If they can only cover themselves with crosses and stars for victories gained in foreign countries, live upon contributions extorted from their unwilling allies, and deal with beauty and booty of subjected nations at their discretion, one form of government is precisely the same in their eyes as another. Nay, they prefer the one that enables them best and most certainly to achieve these things. I don't mean to say that there are not, among the men of fortune and education, especially among the mercantile classes, many, many individuals of sounder views and feelings than these, but of the great body of the Parisians and the French generally (and remember, *equality* is perfectly established among them) I have no hesitation in affirming that I think them utterly unfit for government of *laws* as contra-distinguished from one of men. Indeed, I am more than ever inclined to think that liberty is an affair of *idiosyncrasy*, and not destined to spread very far beyond the Anglo-Saxon race, if even *they* keep it very much longer."—*Legare's Private Correspondence, 1 Writ., 204.*

### SAMUEL JOHNSON

"Dr. Johnson is a horribly bad writer. His artificial periods and his pomposity of phrase to express the boldest common-place, are insupportable to me. Yet, his criticism, in everything that does not soar above a certain height, is usually very sensible. For the sublime or the pathetic, he had neither soul nor ear to comprehend them. Nothing can be more unworthy of the mighty theme than his way of treating Milton, except his superficial notes of Shakespeare. From his praise of Pope's Homer as a *translation*, his insignificant insinuation that the best scholars have more pleasure in reading the 'blind old man,' so perverted (the translation is a good *English* poem, *but—*), than in his own matchless verse, and his absurd remarks on 'Samson Agonistes' and Greek tragedy, I shrewdly suspect the Doctor was no Greek scholar at all; nay, I am sure of it. Latin, I dare say, he knew to a certain extent, prosody especially, but for deep learning he had none. His talent is colloquial, ingenious argument, quick turns of thought, ready, pointed witty repartee, clothed frequently in metaphor which looks like reasoning, and does often bear a great abundance of maxims and moralities, uttered with oracular solemnity, even when rather trivial, and withal a taste for elegance, though false, and a lively but not sublime fancy, these qualities, aided by a very considerable and various literature, and by an invincible confidence in himself and a most dogmatical superciliousness in regard to other people, account for his prodigious celebrity in that day of *talkers* and clubs, and will secure for him a certain (greatly curtailed, no doubt) reputation with posterity. But he is in his true element when he speaks of Dryden, Milton was above his pitch. He had not as much heart as head, and not as much soul as heart, and is *never* either very original or very profound."

—*Legare, from 'Journal of the Rhine,' 1836, Writings, 130.*

### WISDOM—THE END OF LIFE

"The great end of life is the learning *to be wise*, not for purposes of vanity and ostentation, but of happiness in myself and usefulness to others. I wish I could impart to you some of the philosophy which is beginning *at last* to reconcile me to the world, wearisome and evil as it is. You may be sure that the best of all moralists is pleasure. One learns temperance from being always tempted to excess, and contentment with little, by experiencing the vanity of wealth and honors."

—*Legare's Letter to his sister from Brussels, May 3, 1834. Writings, 237-8.*



## BENEFITS OF ART AND SCIENCE

"The love of art and science, that is to say, the love of truth and beauty, when it becomes an engrossing habitual passionate feeling is worth more than all the gifts of fortune. There is one of its good effects which I have never seen pointed out, though it is impossible to overrate its importance. It elevates one's sense of his own dignity and at the same time makes you feel that it is a dignity which the world can neither give nor take away. Thus it mitigates, if it does not utterly cure, the worst of all diseases of our fallen nature (I know that forbidden tree is called the tree of knowledge), that, indeed, by which man fell as angels did before us, a craving, restless, self-tormenting ambition. This seems paradoxical, and yet it is strictly true, for you may set it down for a universal truth, that the greatest lover of art like true lovers of your own sex, ask no dowry with their mistresses but their own complete perfections; and just by so much their power of expressing it is diminished, and affectation and artifice take the place, in what they do, of all eloquent nature."—*Legare's 1 Writings, 241.*

## ENGLAND'S POWER

"I know that in some of the graces of polished society, in some of the arts of an elegant imagination that in the exact sciences and in mere learning and general intellectual cultivation some nations have excelled, perhaps, many equaled, England. But, in that civilization which, as I have said before, it is the great end of modern political economy to promote, and which is immediately connected with the subject before you, which at once springs out of, and leads to, the accumulation of capital and the distribution of wealth and comfort through all classes of a community, with an immense aggregate of national power and resources, that civilization which enables man to 'wield these elements, and arm him with the force of all their legions' which gives him dominion over all other creatures and makes him emphatically the lord of the Universe, that civilization which consists not in music, not in playing on the flute as the Athenian hero said, but in turning a small city into a great one; in that victorious, triumphant, irresistible civilization, there is nothing recorded in the annals of mankind that does not sink into the shades of the deepest eclipse by the side of England."

—*From Legare's speech on the 'Spirit of the Sub-Treasury,' delivered in Congress, Oct., 1837. 1 Writings, 304.*

## GOOD BENCH—HOW OBTAINED

"The only means of having a good bench is to adopt the English plan, give liberal salaries to your judges, let them hold their offices during good behavior, and when they begin to exhibit symptoms of senility and decay, hint to them that their pensions are ready to be paid them. The last is a necessary part of the system, but it is what the American people can never be brought to submit to. They are economical (God save the mark!) and, therefore, will not spend money without a present and palpable *quid pro quo*, they are metaphysical, and, therefore, they will not violate what is called, we know not why, *principles*. They deem anything preferable. Extinguish the light of Kent and Spencer submit to the drivings of dotage and imbecility, nay, even resort to the abominations of an elective judiciary system, anything rather than adopt the plain, manly, and only sure means of securing the greatest blessing but liberty, which civil society can attain to, the able administration of the laws."

—*Legare's 'Review, of Kent's Commentaries.' 2 Writings, 141.*



## GREAT MEN OF GREECE—UNPRINCIPLED

"There is scarcely a great man of Greece whose biography is free from some of those dark stains, which no virtues would now be thought sufficient to compensate, and no glory to conceal. Without citing the examples of such men as Themistocles and Lysander, notoriously, and even for their own times, remarkably unprincipled, however, gifted and celebrated men, Plutarch has scarcely a hero who would pass muster as a gentleman now. Timoleon, for instance, has been pronounced by Heeren and others the most perfect model of a republican in the history of the world—a world that has seen our Washington! And we admit that we do not think the annals of popular government, in all antiquity, offer an example, on the whole, more enviable and winning. Yet, if this biographer is to be relied on, he was accessory to, by permitting as barbarous and wanton as the mean vengeance of faction ever practiced."

—*Hugh S. Legare. "The Democracy of Athens" in N. Y. Review, No. 10, 1836. Writings, 439.*

## THE GREATEST FRENCHMEN

"The three men whose memories are dearest to France, I do not mean in the vulgar sense of the word 'popularity,' Richelieu, Louis XIV, and Bonaparte, will be remembered after all transitory grounds of reputation and influence shall be passed away, as founders of three military posts of Brest, Dunkirk, and Antwerp. The last of these I have often visited with interest. Its great importance to the empire of Napoleon was well expressed in his saying that it was a pistol loaded and presented at the very heart of England."

—*Hugh S. Legare from speech in H. of R., Washington, D. C., on the Advocacy of Pensacola as a Southern Naval Depot, Jan. 11, 1839. 1 Writings, 332.*

"In Legare's death the Constitution has lost one of its best friends; the Supreme Court one of its brightest ornaments; the country an inestimable man, whose independence, whose public virtue, whose rare endowments, and whose freedom from all the arts of popularity gave full assurance of a life of the highest value to the State. To me, had my own career closed before his, a single word of praise from his lips, could I have looked back to know it, would have been as valuable a tribute as from any other human being."

—*Jos. Story, 'Miscellaneous Writings,' 824, from Lecture to Students of Dane Law School.*

"He trod a career as yet unattempted in this country, a preparation, the completest, brought to practical life in its most difficult pursuits; mastering by consummate labor, learning enough for a life-time of erudition, accomplishments enough for a life-time of leisure, and then turning all these to the aid of public performance."

—*Legare's Writings, XXIV.*

"As an orator and politician, he rivaled the splendor of Burke and his flashing reach of thought, as a scholar he entirely equaled Gibbon in labor and learning, and would have placed himself in parallel with Mansfield as a lawyer. \* \* \* A man far the most remarkable that our country has seen, in all accomplishments of public life, he left nothing to be lamented in his career except its early close, dying at fifty-five years of age."—*Legare's Biographical Memoir, pg. LXVIII.*



ROBERT LANSING (1864- ), New York

### CLEMENCEAU

"Once in the saddle Clemenceau, contrary to the public estimate of his nature, did not ride roughshod over his colleagues. As the presiding officer of the Council of Ten his conduct was urbane and considerate, although I cannot say the same of him when he presided over the Conference on the Preliminaries of Peace, a position which he assumed with the same assurance with which he had assumed the presidency of the council. In dealing with the great body of delegates, which met usually in the Salle de l'Horloge of the Palace of the Ministry of Foreign Affairs, he lived up to his reputation. He was, in fact, utterly ruthless in pressing through the program agreed upon by the Council of Ten. He swept aside objections and suppressed interruptions with little regard for the speakers who dared to challenge his will. The way he forced business forward, ignoring or rebuking a delegate whom he thought opposed to the program, reminded one of the methods frequently employed at an American ward caucus a generation ago. His caustic sentences, his fluency of speech, increasing in vehemence as he proceeded, and his real or assumed passion simply overwhelmed protest and resistance. It was in such manifestations of fiery temper and intensity of purpose that one understood how the old statesman had won his *politique Le Tigre*.

"No one who attended a plenary session of the Conference on the Preliminaries of Peace can ever forget M. Clemenceau as he stood with head thrown back between his broad humped shoulders, with the knuckles of his gray-gloved hands resting on the green table in front of him, and with his thick shaggy brows drawn partially over his dark eyes, which fairly sparkled as he addressed the delegates. He usually began speaking in a deliberate and rather monotonous voice, but with no hesitation or break in the even flow of his words. As he proceeded he became more and more emphatic, while the rapidity of his utterance increased until it suggested the drumming of a machine gun. He had none of the arts of oratory, but his distinct and incisive delivery compelled attention if not applause. He seemed to hurl his words at his listeners. Only occasionally did he employ a gesture, but when he did it was vigorous and wholly French. Having finished a forceful address he either sank back into his great golden chair or, if he desired to check further debate, he would state the resolution or decision agreed upon by the Council of the Ten before the session, and without a moment's delay exclaim 'Adopted.' He would then, before anyone could interrupt, take up the next item on the agenda, or else add 'Adjourne.'

"Free debate and actual voting by the delegates had no place in the proceedings with M. Clemenceau in the chair. There was an occasional attempt at discussion, but the Clemenceau method discouraged it. After listening with a tolerant manner and with his half-closed eyes turned toward the ceiling, the old French autocrat would slowly rise from his chair, glare fiercely about the room as if to say, 'We have had enough of this,' and ask whether anyone else desired to speak; and then before another delegate could collect his wits and get to his feet he would snap out the inevitable 'Adopte.' That always ended it. \* \* \* No public man in France had had so stormy a career as he. He had not won his high place by making friends with politicians; he had won it by trampling down his enemies. He did not owe his success to a political party or to a faction; he owed it to compelling recognition of his personal strength and ability. He simply reveled in the struggles in which he was constantly engaged to maintain his position. He never



hesitated to pick up the gage of battle, and he entered the conflict with all the vigor of youth and all the sagacity of age."

—*March 12, '21, Saturday Evening Post.*

### WOODROW WILSON

"The trouble was that the President was not prepared to seize the opportunity and to capitalize this general popular support. (At the Paris Conference.) He came to Paris without, so far as I know, a definite outline of a treaty with Germany. He did have a draft of a covenant of a League of Nations, but it was a crude and undigested plan, as is evident by a comparison of it with the document finally reported to the Conference on the Preliminaries of Peace. He, of course, had his famous fourteen points, and the declarations appearing in his subsequent addresses as bases of the peace, but they were little more than a series of principles and policies to guide in the drafting of actual terms. As to a complete *project*, or even an outline of terms which he laid before the delegates for consideration, he apparently had none; in fact when this lack was felt by members of the American commission they undertook to have their legal advisers prepare a skeleton treaty, but had to abandon the work after it was well under way because the President resented the idea, asserting emphatically that he did not intend to allow lawyers to draw the treaty, a declaration that discouraged those of the profession from volunteering suggestions as to the covenant and other articles of the treaty. The President not having done the preliminary work himself, and unwilling to have others do it, was wholly unprepared to submit anything in concrete form to the European statesman, unless it was his imperfect plan for the League of Nations. The consequence was that the general scheme of the treaty and many of the important articles were prepared and worked out by the British and French delegations. Thus the exceptional opportunity which the President had to impress his ideas on the conference and to lead in the negotiations was lost, and he failed to maintain his controlling position among the statesmen who were, as it turned out, to dictate the terms of peace; while his utterances, which had been the foundation of his popularity, suffered in a measure the same fate.

"If the President had adopted the customary method of negotiation through commissioners instead of pursuing the unusual and in fact untried method of personal participation, the situation would have been very different. Without the President present in Paris detailed instructions would have been prepared, which could have been modified during the negotiations only by reference to him at Washington. Instructions of that sort would of necessity have been definite. There would have been no uncertainty as to the objects sought. But with the President on the ground written instructions seemed to him, and possibly were, superfluous. He was there to decide the attitude of the United States and give oral directions concerning the minutest detail of the negotiations as the questions arose; and since diplomatic commissioners are in any event only agents of the President and subject always to his instructions, the American commissioners at Paris possessed no right to act independently or to do other than follow the directions which they received, which in this case were given by word of mouth. As these directions were meager and indefinite and as they did not include a general plan, the situation was unsatisfactory and embarrassing to the President's American colleagues.

"I doubt if Mr. Wilson had worked out, even tentatively, the application of the principles and precepts which he had declared while the war was in progress, and which had been generally accepted at the time of the armistice as the basis of peace. The consequence was that he must have had a very vague and nebulous scheme for their introduction into the treaty, because many of his declarations required accurate defi-



dition before they could be practically applied to the problems which awaited solution by the conference.

"Naturally there was an air of uncertainty and a feeling of helplessness in approaching the treaty terms which prevented the American commissioners from pressing for definite objects. The whole delegation, the President included, lost prestige and influence with the foreign delegates by this lack of a program.

"Here is shown one of the inherent weaknesses of Mr. Wilson which impaired his capacity as the head of a diplomatic commission to negotiate so intricate a settlement as the treaty with Germany. He was inclined to let matters drift, relying apparently on his own quickness of perception and his own sagacity to defeat or amend terms proposed by members of other delegations. From first to last there was no teamwork, no common council and no concerted action.

"It was discouraging to witness this utter lack of system, when system was so essential. The reason was manifest. There was no directing head to the American commission to formulate a plan, to organize the work and to issue definite instructions. It is my belief that this fault in the negotiations, so far as the United States is concerned, was responsible in no small degree for some of the more undesirable settlements which were incorporated in the treaty of peace. The other heads of states held long daily conferences with their fellow commissioners and principal expert advisers, at which pending questions were debated at length and opinions were freely expressed as to the attitude which should be assumed in view of the national interests involved. Not so the President. He seldom met the American commissioners as a body—in fact only nine times prior to his first return to the United States on February 14th, —and then, except in regard to the covenant, the discussions were desultory and of a general character except on two or three occasions. The President at these meetings did most of the talking, seldom asking advice. They left an impression of doubt as to just what he was seeking to obtain. They might have been, but were not, useful. During the entire period of the negotiations President Wilson summoned the experts to meet as a body with the American commission only once, on June third, when the German and Austrian treaties were completed. \* \* \*

"If the President failed in the full realization of his purposes it was not out of lack of good intentions, but rather because of inexperience in negotiations, of desire to exercise an independent judgment, of exaggeration of the importance of adopting the covenant, and over-confidence in the motives of others. \* \* \*

"The President, as we review his career as a peace commissioner at Paris, stands forth as one of the great dominating figures of the conference, who reached the zenith of his power over the public mind of Europe, over the delegates and over the negotiations at the first plenary sessions of the conference. The reasons for his decline in power, a fact which can hardly be questioned, may be one or more of many. First, the loss of his superior position by intimate personal intercourse with the European statesmen, which could have been avoided if he had remained in the United States or if he had declined to sit as a delegate at Paris. Second, his evident lack of experience as a negotiator and his failure to systematize the work of the American commission and to formulate a program. Third, his exclusiveness and apparent determination to conduct almost every phase of the negotiations and to decide every question alone and independently. Fourth, his willingness to arrange all settlements behind closed doors with the three other heads of states present at the conference. Fifth, his unavoidable lack of knowledge of the details of some of the simple as well as the intricate problems to be solved. Sixth, his insistence on the adoption of the covenant of the League of Nations, as drafted, and the overcoming of opposition by concessions to national aspirations, the justice of which was at least



disputable. Seventh, his loss of the initiative in the formulation of the provisions of the treaties. Eighth, his apparent abandonment of the smaller nations and his tacit denial of the equality of nations by consenting to the creation of an oligarchy of the Great Powers at the conference and in a modified form in the covenant. And ninth, the impression, which greatly increased after his return from the United States in March, that the American people were not a unit in support of his aims as to a League of Nations, disclosed by the report made to the Peace Conference. \* \* \*

"The drafting of a definitive treaty including a detailed covenant for the League of Nations seriously impaired his influence, his prestige and his reputation. His insistence upon the incorporation of the covenant in the treaty lost him the world leadership which was in his grasp."

—*One of his four articles in the Saturday Evening Post, March 19, 1921.*

### LLOYD GEORGE

"While Mr. Lloyd George was vague as to general principles, which accounted largely for the fluid state of his judgments, he had made certain promises during the parliamentary elections of December, 1918, which he considered binding upon him in the negotiations at Paris. Of these, Germany's payment of the costs of war and the public trial of the Kaiser by an international tribunal of justice attracted the most attention. He was very insistent that the treaty should make these promises good, although he must have known that the first was impossible and the second unwise as well as in defiance of all legal precepts. In addition to his political commitments he was determined to obtain the cession of the principal German colonies in Africa and the German islands in the Pacific south of the equator, control of Mesopotamia, a protectorate over Egypt, a practical protectorate over Persia in the event that Persian affairs came before the conference, the destruction of the German merchant marine as a rival of Great Britain in the carrying trade of the world. To these well-defined national policies which were essentially selfish and material, the British Prime Minister clung tenaciously and was able to obtain nearly all of them by skillful maneuvering. His idea seemed to be that if these objects were attained the decisions as to other matters were directly affected, and that to study them thoroughly was a needless expenditure of time and energy. It was very evident to anyone who was familiar with the subjects that he counted on his innate shrewdness, on his skill as a ready debater, and on the promptings of his experts to handle the questions satisfactorily when they were presented to the Council of Four or Council of Ten. \* \* \*

"Though he was thus prone to interfere with others during a debate, Mr. George showed displeasure or annoyance if he was interrupted when speaking or if his statements were challenged. He held his place in the British House of Commons by constant forensic battles. He had used all the arts of a popular political leader to maintain his position, and he had succeeded more by reason of his dynamic personality and by fearlessly denying his enemies than by the superiority of his learning or the strength of his position. All people admire fearlessness and instinctively follow a leader who takes the offensive instead of standing on the defensive. They seem to care far more for this trait than they do for depth of knowledge or soundness of logic. His appreciation of this quality of human nature and his constant exploitation of it in his political career made Lloyd George the Prime Minister of Great Britain. Nothing daunted him. No antagonist was too strongly entrenched to discourage him. His quick wit, his ready tongue and his self-confidence made him what he was, a great parliamentary leader. In some ways his attainments as a politician were not dissimilar to those of M. Clemenceau, tho' the



latter appeared to be more constant and—to use the vulgar term—less shifty than his British colleague.

“In the councils at Paris these qualities of mind were by no means so effective as in the House of Commons or on the political platform. M. Clemenceau sagaciously cast them aside, but Mr. Lloyd George could not. They were his heavy artillery. He would have been lost without them. In the negotiations conducted by the heads of states and foreign ministers of the five Great Powers accurate knowledge counted, and intellectual ability claimed first place. Without Mr. Balfour’s aid and without the constant advice of his subordinates, Mr. Lloyd George would, I fear, have been decidedly outclassed. As it was, his truculence of manner when hard pressed in debate, his attempts to ignore substantial arguments which he was not prepared to answer, and his frequent efforts to enhance the importance of a fact by emphatic declaration were methods that certainly did not carry conviction.

“Yet nobody could come into intimate association with Mr. Lloyd George without falling under the spell of his personal charm. One might dislike his methods as those of a politician; one might even feel a measure of contemptuous surprise that he dared to discuss a question of territory without knowing exactly where the territory was; and there might be a feeling of irritation that he changed his mind whenever it seemed to him expedient; but with it all one liked him. His cheeriness, his vivacity, his never-failing good nature and his delightful humor were assets which counted greatly in his favor.”

—*Saturday Evening Post*, March 26, 1921.

Mr. Lansing’s book on the peace conference at Paris is one of the most tragic books I have ever read. It will be read a hundred years hence as a study of the human soul. It contains the confessions of a man who set down in his diary from day to day that certain things were wrong and that he acquiesced in them, knowing that they were wrong.”

—*Dr. C. F. Aked, pastor of the First Congregational Church, Kansas City, Mo.*

### A LEGAL PRECEDENT

“The defendants had constructed a reservoir on their land to collect and hold water for the purpose of working their mill. Under that land were situated underground workings of an abandoned coal mine, the existence of which was unknown to everybody. After the reservoir had been filled, the water found its way down to those underground workings through some old shafts, and escaping through them flooded the plaintiff’s colliery. The defendants had been guilty of no negligence either in the construction or the use of the reservoir, and they contended that in the absence of negligence they were not liable. The plaintiff contended on the other hand that the defendants, having brought and stored the water upon their land for their own purposes, were bound to keep it safely there, and that if it escaped to adjoining lands and did damage the defendants were liable for the breach of this duty whether or not it was due to negligence.”

The Court, Mr. Justice Blackburn, had to reason out an analogy from the liability for other kinds of dangerous things, e. g. wild animals; and finally it set up the principle (in the words of the Court, subsequently approved by the House of Lords), that: “The person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape, or the ‘doctrine of absolute liability.’ ”

—*Paul Vinogradoff’s ‘Common Sense in Law,’ 187-8. Rylands v. Fletcher, 1868.*



FREDERICK W LEHMANN (1853- ), Missouri

ABRAHAM LINCOLN

"As the Nation was nearing this last great crisis (the Civil War), Abraham Lincoln appeared among the forces of Union and Freedom, and to him they turned more and more for guidance and leadership. And who was he that he should attempt the accomplishment of work which so often throughout the life of the Nation its greatest statesman had undertaken, and had failed to do?

"He was an American, in whose veins blended the blood of the North and the South. He was born to the hardships and privations of pioneer civilization, and suffered and sustained them throughout his youth, and well into manhood. Education, so far as the schools afforded it, did but little for him, but he learned well the lessons of self-help and self-reliance which the isolation of the back-woods enforced upon its people. But neither in his ancestry nor in his surroundings was he singular. There were many men of his time whose heredity and environment were essentially like his own. What, then, made him the man he was? We can answer this question when we can answer why, among all the Englishmen of his day, there was but one Shakespeare, and why, in a later generation of Scotchmen, there was but one Burns. That which distinguished a man among his neighbors, that in which he differs from those who were born and bred as he was, is too subtle for determination by human analysis. It discloses itself as he develops with the years, but it is not the product of the years. We say it was born with the man, and we see that it was not born with his brother. Something may be bred into the bone, and something may be trained into the flesh, but neither breeding nor training, nor both of them, explain for us the master spirits of the world. Heredity and environment are the two parts of a common mold in which the clay of humanity is cast, but it must be that beyond these there is, now and then, at the interval of many years, the touch and impress of the creative hand itself, imparting something of the divine spark we call genius. \* \* \* Men thought him weak, because in so many things he was complaisant, but they found that when the depths of his nature were stirred and his convictions aroused he was absolutely self-reliant and indomitable in his purpose, and proved himself, not the creature, but the master, of circumstance. \* \* \*

"The depressing conditions of his early life imbued him with sadness and melancholy, but the gloom of these was lightened by that humor which is so close akin to pathos. That he was given to telling stories, and that these sometimes had the smell of the barnyard, but never the odor of the brothel, we must believe, for the traditions are too insistent for dispute, but he was not the people's jester, as some who did not know him were disposed to believe. The man who once puts on the cap and bells cannot doff them, as more than one in our public life has found, to his cost. It was the earnestness of his nature, the seriousness of his purpose, which impressed the nation, for men never followed a clown or buffoon through fire and blood, as they followed him. Had he been lightminded, he would have broken under the burden of his lot. Great strength of will was requisite to acquire the education he got, in spite of the invidious bars against him. A few months of school, the Bible, Aesop, Shakespeare, Bunyan and Burns, and what was the result? The highest culture to be found in the political literature of America. And he knew his power. No man could express his thoughts for him. Ambitious young reporters in the West attempted it, but with kindly hand he put their paraphrase aside and held to his own words. The



scholar of his party in the East advised eliminating, as in bad taste, the closing words of the first inaugural, but his judgment of their propriety was not shaken. Read his public letters, papers and addresses. They are profoundly serious. A gleam of humor, very seldom an anecdote, and when occurring brought at once to its point; nothing coarse, with but one exception, and this apologized for in the speech itself; rarely quotations from others, and always brief when his own ideas are to be expressed, and throughout, a simple, strong statement of his meaning in the purest, cleanest Saxon English to be found outside the Bible, and, in some of its strains, as in the second inaugural, rising to the loftiest ranges of the Bible itself."

—*Frederick W. Lehmann, St. Louis, Mo. From address delivered at Lincoln Memorial.*

### LINCOLN AS A LAWYER

"He (Lincoln) proved his capacity more and more with the passing years. Douglas in the first debate of 1858, speaking in all sincerity, said, 'Lincoln is one of those peculiar men who perform with admirable skill everything which they undertake.' He demonstrated this in his career as a lawyer. In the field of practice which he chose for himself, he was conspicuously successful. In the matter of income, indeed, he was surpassed by many of his contemporaries, for his own pecuniary interest in his business was for him its least attractive feature. He cherished high ideals of his calling. The law to him was the ministry of justice. In the present day vocation of advising how the mandates of the law may be evaded without incurring its penalties, he would have made a sorry showing. His abilities displayed themselves at their best in the open contests of the courtroom, when human rights were involved. He was a trial lawyer, with skill to follow the truth through a tangled mass of testimony, and an advocate with power to enforce upon others the convictions of his own mind."—*F. W. Lehmann, idem.*

Mr. Lehmann was a ranchman and a farmer's helper in S.-W. Iowa; studied law and practiced in Nebraska City, Nebr., with Judge Mason; moved to Des Moines, thence to St. Louis, Mo., in 1890, to take charge of the assistant solicitor-generalship of the Gould System. He remained in that position five years. Has been President of the American Bar Ass'n.; Solicitor-General of the United States, and is one of the leading lawyers of the West.

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### LORD KENYON'S INVECTIVE AGAINST A PRISONER

Lord Kenyon thus addressed a dishonest butler who had been convicted of stealing large quantities of wine from his master's cellar:

"Prisoner at the bar, you stand convicted on the most conclusive evidence of a crime of inexpressible atrocity—a crime that defiles the sacred springs of domestic confidence, and is calculated to strike alarm into the breast of every Englishman who invests largely in the choicer vintages of Southern Europe. Like the serpent of old, you have stung the hand of your protector. Fortunate in having a generous employer, you might without dishonesty have continued to supply your wretched wife and children with the comforts of sufficient prosperity, and even with some of the luxuries of affluence; but dead to every claim of natural affection, and blind to your own real interest, you burst through all the restraints of religion and morality, and have for many years been feathering your own nest with your masters' bottles."

—*F. E. Heard's "Oddities of the Law."*



JAMES HAMILTON LEWIS (1869- ), Illinois

## PERORATION IN DEFENSE OF AN OUTCAST WOMAN

"Counsel says this woman should be punished. Punished? Can any punishment surpass that which already has fallen upon this homeless, hopeless, helpless woman? The doors of tomorrow are shut upon her; the hand of friendship has been withdrawn. The faces she loved have been averted; the friends departed. She is destined as one who is a plague, to walk forever alone, alone forever and forever. To Society an outcast, to love a stranger; to the world a woman suspected. Which one of us would care to have a sister or a woman dear to us go through the life she will face even after freedom? Her days are darkness; her nights are death! For her there is no freedom—all is punishment, all is imprisonment."—*In defense of Dora McDonald, in Chicago, Ill.*

## INTERNATIONAL LAW

"The thing called 'international law' was never more than a thing proposed and accepted by organizations calling themselves nations, and this was for the security of themselves. It had the object of prescribing and maintaining some rule of action among collections called 'Government.' This was to secure to each the particular system each had decreed for its internal welfare—a mere consent compact, applying to all in such manner as would serve the uses of each. There was no forum to enforce—no process to exact—the obedience of any decree or ordinance. This condition makes mockery of the meaning of law. Our earliest history informs us that the Judean governments had a system of rules among their tribes as intercontinental law; then the Greeks, by a convening in groves, speaking through the voice of representatives, adopted the system of the Israelite teachers. Then followed Rome, which by force of her arms maintained her domination. She adopted the Codes of Pomponius and of Tribonian and established a system of co-operative conduct for the uses of such countries, and provinces as depended upon Rome's imperial central authority. The Saxons copied the rules of governmental regulation which had been proclaimed in Ireland. From all these, in some composite adaptation, come the rules to our modern world, and under the kings of the 12th century these took the first form of an International Code. \* \* \* We have deduced some of the rules that but lately we fancied were in existence and prevailing in our own time and generation. First, the right of any neutral to sell to any other neutral through seas extending to the shores of belligerents. Second, the universality of the distribution of breadstuffs to the non-fighting population of any belligerent. Lastly, the freedom of locomotion of the peoples of any land among any other land at peace, and the carrying of their peaceful commerce to any peaceful zone, or into any other zone with peaceful object. Finally, as the last doctrine enunciated in our present generation and the most modern of international law, the privilege of proposed mediation on the part of any government at peace for the securing of peace of the others. This with the object of protecting and avoiding the nation mediating from being embroiled.

"I mention these, that these few may, in their course, accent with their evidence the revolution this day affords, and now *all international laws, which we heretofore esteemed as fixed, have, by the exigencies of events, ceased to exist as accepted doctrines in the world.*

"Europe is at war! Twelve nations have closed their temples of love to open their furnaces of hate." The continents of Europe, Asia and Africa



are ablaze with flame. America alone is exempt. America stands singly at peace, with hands outstretched to the great Jehovah, praying that peace may be on earth and to men good will. Yet we are asking of our hearts how long will we be able to maintain our people in patience—our nation in religious regard for the love of their brother man? America is human and can be the subject of all passions that surge in the hearts of her fellows all over the world. We know that it is the violations of the essential privileges of man, as expressed in the international law of nations, that quickly arouse and ever explode a people to action, and when it is a people of emotion as is ours, the action is dire and dreadful.”

—*Address on the U. S. International Law-Giver of the World of Tomorrow,*” before the N. C. Bar Ass’n., at Asheville, N. C., 1915.

Mr. Lewis was born in Va., reared and schooled in Ga. and Va., moved to and practiced law in Washington; moved to Chicago, Ill., in 1903; has held various State and National offices; was U. S. Senator from Ill., being appointed in ’12, and elected in ’13, his term expiring, ’19. Is author of several law books, and was late law lecturer in Northwestern University, and Webster College of Law, Chicago.

### ROSCOE CONKLING

“Roscoe Conkling was created by nature for a great career. That he missed it was entirely his own fault. Physically he was the handsomest man of his time. His mental equipment nearly approached genius. He was industrious to a degree. His oratorical gifts were of the highest order, and he was a debater of rare power and resources. But his intolerable egotism deprived him of vision necessary for supreme leadership. With all his oratorical power and his talent in debate, he made little impression upon the country and none upon posterity. His position in the Senate was a masterful one, and on the platform most attractive, but none of his speeches appear in the schoolbooks or in the collections of great orations. The reason was that his wonderful gifts were wholly devoted to partisan discussions and local issues.

“His philippic against George W. Curtis at the Republican State convention at Rochester was regarded as the high-water mark of his oratory. \* \* \* The assault upon Mr. Curtis was exceedingly bitter, the denunciation very severe, and every resource of sarcasm, of which he was master, was poured upon his victim. His bitterness was caused by Mr. Curtis’s free criticism of him on various occasions. The speech lasted two hours. \* \* \* When Conkling’s career closed as a national leader, there was hardly an active member of the Republican party in N. Y., of national reputation, unless he had secured it before Mr. Conkling became the autocrat of State politics. \* \* \* His peculiar temperament was a source of great trouble to his lieutenants. They were all able and loyal, but he was intolerant of any exercise on their part of independent judgment. This led to the breaking off of all relations with the two most distinguished of them—President Arthur and Governor Cornell. A breach once made could not be healed. A bitter controversy in debate with Mr. Blaine assumed a personal character. In the exchanges common in the heat of such debates Blaine ridiculed Conkling’s manner and called him a turkey-cock. Mutual friends tried many times to bring them together; Blaine was always willing, but Conkling never. \* \* \*. Yet Senator Conkling’s career at the bar was most successful, and there was universal sorrow when his life ended in the tragedy of the great blizzard.”

—C. M. Depew, *‘Memories of Eighty Years’*, 79-86.



WM. DRAPER LEWIS (       -       ), Pennsylvania

### MARSHALL, A GREAT JUDGE

"If we read Marshall's opinions in the four great cases interpreting the Constitution—*Marbury v. Madison*, *McCulloch v. Maryland*, *Gibbons v. Ogden*, and *Cohen v. Virginia*—we will see that the great issue involved was interpreted according to its evident meaning,—the important part of the same decided; while we have some doubt in regard to the matter treated, we will not have as to the correctness of his conclusions on questions of first importance.

"Thus in *Marbury v. Madison*, we may doubt whether the appointment to a Federal office is complete until the appointee's commission is delivered to him, but not of the duty of the judiciary to disregard constitutional legislation; in *McCulloch v. Maryland*, we may question that 'the power to tax is the power to destroy,' but not the power of the Federal Government to create a corporation as a means of executing one of its enumerated powers; in *Gibbons v. Ogden*, we may think, in spite of Marshall's opinion to the contrary, that the legislation of Congress and of the State of New York were not in conflict, but we will not dispute the correctness of the definition of the scope of the Federal power over commerce; while in *Cohen v. Virginia*, as the court confines itself to the simple question of jurisdiction, we will accept Marshall's argument in all its parts as sound. This ability to take a legal question on which a large number of persons have preconceived opinions, the product of their political prejudices, analyze it in all its parts in such a way that the conclusion reached is admitted by the great majority of each successive generation of students to be inevitable, is the best test of Marshall's greatness as a lawyer."

—*Wm. Draper Lewis*,—2 *Great American Lawyers*, pp. 374-5.

### WHY MADE CHIEF JUSTICE

"Marshall was really made Chief Justice by John Adams, in payment of a political debt, and because of his logical masterly argument of a law question while a member of Congress. Thomas Nash, alias Jonathan Robbins, an Irish mate of the boatswain of the British frigate 'Hermione,' had mutinied and with others killed the principal officers and carried the boat into a Spanish port, and was in consequence surrendered to the British authorities by President Adams, under the Jay treaty, and was apprehended in Charlestown, S. C., in 1799, and his extradition asked by British authorities. Adams referred the matter to Judge Bee, the U. S. Judge at Charlestown, and the Judge, acting as a commissioner and carrying out the suggestion of the President, turned him over to Great Britain, where he was tried by court-martial, convicted and hanged. The affair caused great excitement. Nash had claimed American citizenship. The Republicans (the Jefferson party) took the ground that he had the right to a judicial trial, as provided by the Constitution; that the President's action should be condemned, etc. Resolutions were introduced in the House to this effect. It was in opposition to these that Marshall addressed Congress, March 4, 1799. He maintained—

"1st. That the case was within the Treaty.

"2nd, That the case was for Executive and not judicial exercise.

"It was a great speech, one of the best in our political annals, and it is equal to any of his great judicial decisions—analytical, clear, concise, logical, convincing. After the argument the President's position was substantiated, by a large majority, and Marshall's great reasoning powers recognized."—2 *'Great American Lawyers,' Art. 'Marshall,' pp. 342-4.*



"Gallatin, who was the leader on the Republican side, was chosen to answer Marshall, and when prodded to do so, exclaimed: 'Answer it yourself. For my part, I think it unanswerable.' The vote stood 61 to 35 in the House when the parties were nearly equal in numbers in opposition to Livingston's resolutions against Adams. Jefferson, a bitter enemy of Marshall, said, 'Livingston, Nicholas and Gallatin distinguished themselves, on the one side, John Marshall greatly, on the other.' This is high praise from Jefferson, as he was especially virulent toward an enemy."

### PAUL ON MARS HILL

"I saw Paul, alone and unfriended, on the hill over against the Parthenon, despised by the Greeks because he was a Jew, and despised by the Jews because he was half Greek; a fanatic to the one, a heretic to the other; suspected even by his own church, and setting over against this beautiful temple and this impressive pageantry and this all-powerful priesthood—what? An idea, words, mere words, a breath, a palpitation of the air, audible for a moment—then gone forever. And yet! the pageantry has long since ceased to impress, the priesthood have long ceased to influence, the sacrifices are no longer offered, the music is no longer heard, the temple is only a beautiful ruin—but Paul's speech on Mars Hill, preserved we know not how nor by whom, will live as long as reason, vivified by imagination and surcharged with emotion, has power to move the mind of man. As I reflected on this contrast, the history of the intervening centuries, which the guide in the morning had skillfully epitomized in a few sentences, came back to me with its lesson. I felt rather than defined even to myself the difference in spirit between Paul and the later religionists who, in the same place, have endeavored to reform religion. The Christians turned the Parthenon into a Christian church, put up an altar, painted on the walls some frescoes of saints—the dim outline is still discernible there—substituted for the pagan ritual a Christian ritual, and the pagan creed a Christian creed. The Mohammedans followed; tore down the altar, tore down the cross, effaced the frescoes, knocked the heads off from the images, and put up a tower for their call to prayer. The later Christians came in again, tore down the tower, and effaced as far as they could the signs of the Turkish occupation. Each religionist saw in creed and ritual and altar and image a symbol of a hated religion, and tried to reform it by destroying it and putting another symbol in its place. Paul criticised neither ritual, creed or image. He praised the pagans for their religion. 'I have come to help you,' he said in effect, 'to understand better the God you worship but confess you do not know.' I never felt so strongly the folly of all this controversy about creeds and rituals and images—the mere symbols of religion; I never felt so strongly the splendid courage of this man standing alone in the midst of all this pagan symbolism and offering absolutely no substitute for it all and no criticism on it all; offering only a thought, an idea, a truth—invisible, impalpable, immaterial, unsymbolical, and therefore eternal."—*Lyman Abbott, 'Impressions of a Careless Traveler,' 124-26.*



## JUSTIN LEWIS

### REPRODUCTION

"The principle of reproduction stands next in importance to the elder-born correlative self-preservation, and is equally a fundamental law of existence. It is the blessing which tempers with mercy the justice of expulsion from Paradise. It was impressed upon the human creation by a beneficent Providence to multiply the images of Himself, and thus promote his own glory and the happiness of His creatures. Not man alone, but the whole animal and vegetable kingdom are under an imperious necessity to obey its mandates. From the lord of the forest to the monster of the deep, from the subtlety of the serpent to the innocence of the dove, from the elastic embrace of the mountain kalmia to the descending fructification of the lily of the plain, all nature bows submissively to this primal law. Even the flowers which perfume the air with their hues are 'but curtains to the nuptial bed,' The principles of morality, the policy of the nation, the doctrines of the common law, the law of nature, and the law of God, unite in condemning as void the condition attempted to be imposed upon the widow."

—*Mr. Justice Lewis—Commonwealth v. Stauffer, 10 Pa. State.*

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### MOTHERHOOD

"The mother who bore us laid down her life in order that she might give a new life to the world. I do not suppose that any man can comprehend the strange feeling of hope and fear which struggles within the awe-struck heart of the expectant mother. She goes down to the brink of that mysterious stream which is both the river of life and the river of death, and knows not whether the ferryman will come to carry her away to the unknown land or out of the unknown land will bring a new life to her. When the new born child is laid in her arms her travail pain is not over. Just begun is that mother's experience, which is at once the greatest fear and the greatest hope, the greatest joy of human life. Not only in those few hours of physical anguish does she suffer; her life is one long, joyful, self-sacrifice—joyful because the greatest joy of life is the joy of self-sacrifice. She daily lays down her life for her child. She delights in menial services rendered to him which she has never before rendered to anyone; she abandons the society in which market place she was wont to exchange services of good will, and devotes herself to the society of the babe who takes all and gives nothing. The songs she sings to her babe are her only music; her chief literature is the stories she reads to the growing child; her most instructive studies are those in which she is his leader. She fears nothing so much as that he may become estranged from her and from his home and fall into vicious habits; she hopes for nothing so much as that he may grow up to be gentle and strong, just and generous, courageous and wise; and she experiences a remorse in his incipient vices far greater than any he will ever know, unless in later years the memory of her tears comes out of the past to teach him.

"Motherhood is one long travail because it is the supremest revelation which human experience affords of life-giving, and life-giving is always costly to the giver. This it is which makes motherhood the most revered of all offices and mother the most sacred of all words."

—*Lyman Abbott, "What Christianity Means to Me," pp. 147-8*



## ABRAHAM LINCOLN (1809-1865), Illinois

### THE GETTYSBURG SPEECH

"Fourscore and seven years ago our fathers brought forth in this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal. Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We met on a great battle-field of that war. We have come to dedicate a portion of that field as a final resting-place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this. But, in a larger sense, we cannot dedicate—we cannot consecrate—we cannot hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here. It is for us, the living rather, to be dedicated here to the unfinished work which they who fought here have thus far so ably advanced. It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom; and that government of the people, by the people, for the people, shall not perish from the earth."

—*Lincoln's two-minute Dedication speech of the National Cemetery at Gettysburg, Pa., Nov. 19, 1863.*

Says John Bigelow: "The Gettysburg speech is, perhaps, on the whole, the most enduring bit of eloquence that has ever been uttered on this continent, and yet one finds in it none of the tricks of the forum or the stage, nor any trace of the learning of the scholar, nor the need of it."

Edward Everett, who made the principal speech of the day, said to Lincoln:—"I should be glad if I came as near the central idea in two hours, as you did in two minutes."

### THE BIXBY LETTER

"Dear Madam:—I have been shown in the files of the War Department a statement of the Adjutant-General of Massachusetts that you are the mother of five sons who have died gloriously on the field of battle. I feel how weak and fruitless must be any word of mine which should attempt to beguile you from the grief of a loss so overwhelming. But I cannot refrain from tendering to you the consolation that may be found in the thanks of the Republic they died to save. I pray that our Heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the altar of Freedom."—*Letter to Mrs. Bixby, Nov. 21, 1864.*

Says Geo. S. Boutwell:—"I imagine that all history and all literature may be searched, and in vain, for a finer tribute, so touching, so comprehensive, so fortunate in expression, as this."

### SECOND INAUGURAL ADDRESS

"Neither party expected for the war the magnitude or the duration which it has already attained. Neither anticipated that the cause of the



conflict might cease with, or even before, the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the same Bible, and pray to the same God; and each invokes His aid against the other. It may seem strange that any man should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces; but let us judge not, that we be not judged. The prayers of both could not be answered—that of neither has been answered fully.

“The Almighty has His own purposes, ‘Woe unto the world because of offenses! for it must needs be that offenses come; but woe to that man by whom the offense cometh.’ If we shall suppose that American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war, as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him? Fondly do we hope—fervently do we pray—that this mighty scourge of war may speedily pass away.”

—*Second Inaugural.*

### LEONARD SWETT ON LINCOLN

“Leonard Swett, himself one of the greatest advocates and a trial lawyer, seldom equaled by any man of his generation—to many of whose arguments the writer has listened with rapt attention—has said that if Lincoln ever had a superior before a jury—and the more intelligent the jury the better he was pleased—he, Swett, never knew him. Mr. Swett went further and declared that in his younger days he had listened to Tom Corwin, Rufus Choate, and many others of equal standing at the bar, in the trial of cases, but that Mr. Lincoln at his best was more sincere and impressive than any of them, and that what Mr. Lincoln could not accomplish with a jury no other man need try.”

—*John T. Richards' "The Lawyer-Statesman—Lincoln," 21-22.*

“Yet, if God will that it (the war) continue until all the wealth piled by the bondman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another, drawn with the sword, as was said three thousand years ago, so still it must be said, ‘The judgments of the Lord are true and righteous altogether’.”

—*At Washington, D. C., March 4, 1865—Second Inaugural.*

Lincoln wrote Thurlow Weed, Mar. 15, '65,—“I expect the latter (the 2nd Inaugural Speech) to wear as well—perhaps better than anything I have produced; but I believe it is not immediately popular. Men are not flattered by being shown that there has been a difference of purpose between the Almighty and them.”

Of this Inaugural Speech, Fred W. Lehmann, of St. Louis, Mo., says:—“In some of its strains, it rises to the loftiest ranges of the Bible itself.”

(The three samples above given, are generally conceded to be the greatest and best utterances made by Lincoln).

Lincoln appeared as counsel in the Supreme Court of Ill. (the highest court in the State) in 175 cases, a record rarely equaled by any lawyer even, to-day. Says one of his latest biographers.

—*John T. Richards, in his "Abraham Lincoln—the Lawyer-Statesman," p. 68.*

“Had he lived to witness the realization of that vision which he saw so beautifully expressed in his first inaugural when ‘the mystic chords of memory stretching from every battle-field and patriot grave, to every living heart and hearthstone all over this broad land’ should ‘swell the



chorus of the Union,' it is believed that he would have proved himself the greatest constitutional lawyer of the 19th century, and many of the mistakes and horrors of the Reconstruction period would have been unknown to our country's history."—*John T. Richards*'—*'Lincoln,'* p. 68.

## THE TWO PRINCIPLES,—RIGHT AND WRONG—RULE THE WORLD

"That is the real issue. That is the issue that will continue in this country when these poor tongues of Judge Douglas and myself shall be silent. It is the eternal struggle between these two principles,—right and wrong—throughout the world. They are the two principles that have stood face to face from the beginning of time; and will ever continue to struggle. The one is the common right of humanity, and the other the divine right of kings. It is the same principle in whatever shape it develops itself. It is the same spirit that says, 'You toil and work and earn bread, and I'll eat it.' No matter in what shape it comes, whether from the mouth of a king who seeks to bestride the people of his own nation and live by the fruit of their labor, or from one race of men as an apology for enslaving another race, it is the same tyrannical principle."

—*From Debate with Douglas, at Alton, Ill., Oct. 15, 1858.*

## STATES' RIGHTS

"If the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it,—break it, so to speak; but does it not require all to lawfully rescind? \* \* \* Plainly the essence of secession is the essence of anarchy.

"A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it does, of necessity, fly to anarchy or to despotism. Unanimity is impossible; the rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism in some form is all that is left."

—*From the First Inaugural Speech, Mar. 4, 1861.*

## THE LAWYER

"I am not an accomplished lawyer. I find quite as much material for a lecture in those points wherein I have failed, as in those wherein I have been moderately successful. The leading rule of the lawyer, as for the man of every other calling, is diligence. Leave nothing for tomorrow which can be done today. Never let your correspondence fall behind. Whatever piece of business you have in hand, before stopping, do all the labor pertaining to it which can be done. When you bring a common law suit, if you have the facts for doing so, write the declaration at once. If a law point be involved, examine the books, and note the authority you rely on upon the declaration itself, where you are sure to find it when wanted. The same of defense and pleas. In business not likely to be litigated,—ordinary collection cases, foreclosures, partitions, and the like,—make all examinations of titles, and note them, and even draft orders and decrees in advance. This course has a triple advantage; it avoids omissions and neglect, saves your labor when once done, performs the labor out of court when you have leisure, rather than in court when you have not. Extemporaneous speaking should be practiced and cultivated. It is the lawyer's avenue to the public. However able and faithful he may be in other respects, people are slow to bring him business if he cannot make a speech. And yet, there is not a more fatal error



to young lawyers than relying too much on speech-making. If anyone, upon his rare powers of speaking, shall claim an exemption from the drudgery of the law, his case is a failure in advance.

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife, and put money in his pocket? A moral tone ought to be infused into the profession which would drive such men out of it.

“The matter of fees is important, far beyond the mere question of bread and butter involved. Properly attended to, fuller justice is done to both lawyer and client. An exorbitant fee should never be claimed. As a general rule never take your whole fee in advance, nor any more than a small retainer. When fully paid beforehand, you are more than a common mortal if you can feel the same interest in the case, as if something was still in prospect for you, as well as for your client. And when you lack interest in the case the job will very likely lack skill and diligence in the performance. Settle the amount of fee and take a note in advance. Then you will feel that you are working for something and you are sure to do your work faithfully and well. Never sell a fee note—at least not before the consideration service is performed. It leads to negligence and dishonesty—negligence by losing interest in the case, and dishonesty in refusing to refund when you have allowed the consideration to fail.

“There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. Let no young man choosing the law for a calling for a moment yield to the popular belief—resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave.”—*Notes for a Law Lecture, July, 1850.*

### THE FIRST INVENTION

“When Adam observed his nakedness, the observation was not lost upon him; for it immediately led to the first of all inventions of which we have any direct account—the fig-leaf apron.”

—*From Lincoln's Lecture on 'Discoveries, Inventions, and Improvements,' before the Springfield, Ill., Library Ass'n., Feb. 22, 1860.*

### FREDERICK DOUGLAS' COMPLIMENT

“Mr. Lincoln is the only white man into whose presence I was ever ushered who did not make me feel that I was a negro.”

### L. E. CHITTENDEN—LINCOLN'S STYLE IN SPEECH

“Lincoln could give expression to an idea or a principle in fewer and more forcible words than any author with whose writings I am acquainted.”

—“*Lincoln as a Lawyer,*” 1894, *Green Bag.*



## ARNOLD—ON LINCOLN AND DOUGLAS

"Both were strong jury lawyers, Lincoln was, on the whole, the strongest we ever had in Illinois. Both were distinguished for their abilities in seizing and bringing out distinctly and clearly the real points in a case. Both were happy in the examination of witnesses; but I think Lincoln was the stronger of the two in cross-examination."

## LINCOLN COLLECTED \$500 FROM DOUGLAS

Abraham Brokaw, of Bloomington, loaned \$500 to one of his neighbors, and took a note, which remained unpaid. Action was brought, the sheriff levied on the property of the debtor and collected the entire amount, but neglected to turn over the proceeds. Brokaw employed Stephen A. Douglas, who collected the amount from the bondsman of the sheriff, but returned to his seat in the Senate at Washington without making a settlement. Like some other great men, Douglas was very careless about money matters, and, after appealing to him again and again, Brokaw employed David Davis to bring suit against the Senator. Being an intimate friend and fellow Democrat, Davis disliked to appear in the case, and by his advice Brokaw engaged the services of Lincoln. The latter wrote to Douglas in Washington that he had a claim against him for collection and must insist upon prompt payment. Douglas became very indignant and reproached Brokaw for placing such a weapon in the hands of an abolitionist. Brokaw sent Douglas' letter to Lincoln and the latter employed 'Long John Wentworth,' then a Democratic member of Congress from Chicago, as an associate in the case. Wentworth saw Douglas, persuaded him to pay the money and forwarded \$500 to Lincoln, who, in turn, paid it to Brokaw, and sent a bill for \$3.50 for his professional services.

—*Wm. Elery Curtis' Abraham Lincoln, 5 Great American Lawyers, 485-6.*

## SQUATTER SOVEREIGNTY

"Squatter Sovereignty is as thin as the homeopathic soup that was made by boiling the shadow of a pigeon that had starved to death," said Lincoln, in his Debate with Douglas, at Quincy, Ill., Oct. 13, 1858.

## LINCOLN'S PHILOSOPHY

"I do the very best I know how—the very best I can; and I mean to keep doing so until the end. If the end brings me out all right, what is said against me won't amount to anything, if the end brings me out wrong, ten angels swearing I was right would make no difference."

## NOT BOUND TO WIN

"I am not bound to win, but I am bound to be true. I am not bound to succeed, but I am bound to live up to what light I have. I must stand with anybody that stands right; stand with him while he is right, and part with him when he goes wrong."

## THE EPITAPH LINCOLN WANTED

"When I die, I want it said of me by those who know me best, that I always plucked a thistle and planted a flower, when I thought a flower would grow."



## A NEWSPAPER CONTROVERSY

"No man, whether he be a private citizen or President of the United States, can successfully carry on a controversy with a great newspaper and escape destruction unless he owns a newspaper equally great with a circulation in the same neighborhood."

## THOROUGHLY STUDIED WORDS

"Among my earliest recollections I remember how, when a child, I used to get irritated when anybody talked to me in a way that I could not understand. I can remember going to my little bed-room, after hearing the neighbors talk of an evening with my father, and spending no small part of the night trying to make out what was the exact meaning of some of their, to me, dark sayings. I could not sleep, although I tried to, when I got on such a hunt for an idea until I had caught it; and when I thought I had got it I was not satisfied until I had repeated it over and over again, until I had put it in language plain enough, as I thought, for any boy I knew to comprehend. This was a kind of a passion with me, and it has stuck by me; for I am never easy now, when I am handling a thought, until I have bounded it north and bounded it south and bounded it east and bounded it west."

—5 *Great American Lawyers*, 465.

Said by Lincoln to a Hartford, Conn., clergyman, in 1860, who asked where he attended college, to get such a style as he (Lincoln) had made a political speech in which the clergyman was so impressed by the language and logic of his address, and Lincoln told him that he 'never went to school more than six months in his life.'

## AUTHORITIES USED IN FIRST INAUGURAL

Lincoln, in preparing his first Inaugural, told Herndon to get him Clay's speech of 1850, Jackson's proclamation against nullification, and Webster's reply to Hayne—the latter of which, he deemed "the greatest piece of oratory in American literature."—*Hapgood's Lincoln*, 182.

## ON QUARRELING

"The advice of a father to his son, 'Beware of entrance to a quarrel, but being in bear it that the opposed may beware of thee!' is good, but not the best. Quarrel not at all. No man resolved to make the most of himself can spare time for personal contention. Still less, can he afford to take all the consequences, including the vitiating of his temper and the loss of self-control. Yield larger things to which you can show no more than equal rights; and yield lesser ones though clearly your own. Better give your path to a dog than be bitten by him in contesting for the right. Even killing the dog would not cure the bite."

—*Nicolay and Hay's Lincoln*, Vol. 1, p. 212.

## SUMMARY OF LINCOLN'S CAREER

"His greatness consisted not in his eloquence as an orator, nor his shrewdness as a lawyer, nor his tact as a diplomat, nor his genius in planning and directing military affairs, nor his executive ability, but in his absolute self-control, his unselfishness, the full mastery of his wisdom, the strength of his convictions, his sound judgment, his absolute integrity, his unwavering adherence to the principles of truth, justice, and honor, his humanity, his love of country, his sublime faith in the people and in Republican institutions. He was without malice or the spirit of resent-



ment, without envy or jealousy, and he suppressed the passions to a degree beyond that of most men. He entered the Presidency with an adequate conception of his own responsibilities, but when he saw his duty he did it with courage, endurance, magnanimity, and unselfish devotion. \* \* \* In four years—four years of battle days—his endurance, his fertility and resources, his magnanimity, were sorely tried and never found wanting. Thereby his courage, his justice, his even temper, his fertile counsel, his humanity, he stood a heroic figure in the center of an epoch.”

—*Wm. Elroy Curtis' True Life of Lincoln*, 396.

#### EFFECTIVE COURT LAWYER—BY HILL

“Lincoln was recognized as a good jury lawyer long before he won any reputation in other lines of legal work. Judge Logan first noted his effectiveness in arguments addressed to the bench; but despite his excellent record in the Supreme Court, where he won a large majority of his cases (where he had no less than 172 cases—I da Tarbell in her *Life of Lincoln*, p. 257, says ‘nearly 100 cases’), he did not gain any marked recognition as a court lawyer until well into the fifties. He was, however, well qualified for work of this character. His power of analysis, pitiless logic, and comprehensive mental grasp of large subjects, all combined to make him a formidable opponent in legal discussions, and a powerful influence with the courts. \* \* \* Precedents did not make him over confident, and they never balked him. Back of the recorded adjudication, he sought the reason, and if it did not satisfy his mind, he could not accept it. Very few lawyers possess sufficient independence and originality for reason of this character, and the average brief, though it often displays great ingenuity in recording divergent authorities, rarely indicates any real creative thought. Legal argument calls for a higher order of ability than jury work, and it developed Lincoln’s talents for logical reasoning until it perfected him to meet and refute the most ingenious debater of his, or possibly of any other, day.”

—*Hill's 'Lincoln. the Lawyer,' pp. 258-62.*

#### NOT A GREAT LAWYER—BUT A GREAT ADVOCATE

“Mr. Lincoln has sometimes been called by his eulogists and biographers a great lawyer. It would be more correct to say that he had some of the qualities of a great lawyer. But he never became a great lawyer in the sense that Alexander Hamilton or Chancellor Kent were great lawyers. He did not study enough, he did not devote himself sufficiently, and his mind during the greater part of his life was too much occupied with other things to make a great lawyer. Practically he knew nothing about the ‘lucubrations of twenty years’ which the great English commentator said were necessary to make a lawyer. To be a great lawyer, a man must know the law. It can only be known by the operations of genius which amounts to intuition, or by years of close application. Mr. Lincoln was not a genius; nor as a lawyer, was he for any considerable length of time a close student. Though not in the strict sense of the term a great lawyer, he was a great advocate, and more successful at the bar than many men as an advocate in cases which called out his full powers; he had few equals and no superior in the courts of Illinois. For this there were two reasons: 1st, he was naturally and conscientiously fair-minded and honest, and was the fairest practitioner I ever saw; and, 2nd, he had great ability. He was a natural logician, and in the trial of a suit a man of overwhelming force and effect.”

—*Judge Samuel C. Parks, of Kansas City, Mo., died in Kansas City, Mo., Feb. 8, 1917, in his 96th year. He was a contemporary of Lincoln's, in Illinois and they were opposed and associated in the trial of many cases. The above is from a lecture before the Oratorical Ass'n., of Michigan University, Jan., 1894.*



## WEAK ON THE WRONG SIDE OF CASE

"On the wrong side of a case he was always weak, and, realizing this, often persuaded his clients to give up litigation rather than compel him to argue against truth and justice. Leonard Swett, of Chicago, for years an intimate associate, and himself one of the most famous of American lawyers, says that sometimes, after Lincoln entered upon a criminal case, the conviction that his client was guilty would affect him with a sort of panic. On one occasion he turned suddenly to his associate and said, 'Swett, the man is guilty; you defend him, I can't,' and so gave up his share of a large fee. At another time when he was engaged with Judge S. C. Parks, in defending a man accused of larceny, he said, 'If you can say anything for the man, do it, I can't; if I attempt it, the jury will see I think he is guilty, and convict him.' Once he was prosecuting a civil suit, in the course of which evidence was introduced showing that his client was attempting a fraud. Lincoln rose and went to his hotel in deep disgust. The Judge sent for him; he refused to come. 'Tell the Judge,' he said, 'my hands are dirty; I came over to wash them.'"

—Hill's *'Lincoln—the Lawyer,'* 498-9.

The compiler of this work took this matter up with Judge Parks, then living, and he said he remembered the case well, referred to above; and that Lincoln did not abandon the case on any high moral ground, but for the reason, he could not conceal his conviction that the prisoner was guilty—that his face was a mirror, and the jury could read his thoughts by looking into his face. So, he said:—"Parks, you go ahead and try the case, and get him out of his difficulty, if you can, and I'll sneak away, for if I stay, he'll surely be convicted." Judge Parks further related that he got a hung jury, though his client was guilty as Cain; and before the next trial, the prisoner died in jail.

## HENRY C. WHITNEY—LINCOLN AS A LAWYER

"Mr. Lincoln was not well grounded in the principles of law, nor was he a well-read lawyer. He had no intuitive sense of abstract justice, had no conception of rules, technicalities, or limitations; he knew nothing of decisions, except such as came with his own experience; he did not approve of being hampered by precedents; to him estoppels were unjust; he had no patience with technicalities as such, desiring to consider every case as disconnected with all else, and to be tried on its abstract and uncumbered merits alone. \* \* \* He would try to establish his contention by logic. His strength as a lawyer lay in his analytical and reasoning faculties; i. e., he could apperceive the matter at issue and deduce the true conclusion from it with much facility and strength as he could achieve the same results from moral questions. \* \* \* He studied both sides of his case, and considered the course of tactics which his opponent would probably pursue quite as thoroughly as he considered his own. Nothing moved or excited him in the course of a trial. \* \* \* His ability to separate important and controlling matters from those which were secondary was marked, and showed great analytical skill. \* \* \* He was probably never exceeded as a story-teller. Was more familiar with the Bible than any other book in the language. He verified the maxim that it is better to know thoroughly a few good books than to read many."—*Henry C. Whitney's Lincoln, Vol. 1, 172-200.*

## SECOND INAUGURAL APPROACHES SERMON ON THE MOUNT

"The second inaugural contains passages which approach the divine Sermon on the Mount for moral sublimity and supreme elevation of thought as closely as a merely human document can do it. It is, in my judgment, a sacred classic."—*1 Whitney's Life of Lincoln, 205.*



## PREPARATION TO MEET DOUGLAS

"The laborious care Lincoln took in preparation for his debate with Douglas by studious application from June until the debates began in the autumn is of interest. \* \* \* His campaign note-books, when finished, could not have been more complete to meet the expected and unexpected questions liable to be sprung on him during the debate. He was no longer the Abraham Lincoln with leisure for the interests of all callers. He lived through laborious days and often into studious nights; and when he went forth into that debate it was with a firm foundation of well-settled principles, and fully equipped with all historical and collateral data possible to be acquired by him on the live political issues of the day. Best of all was the complete confidence he had acquired in himself of his ability to meet Senator Douglas, or any other publicist North or South, in the discussion of the interests and problems then before the country. This was no self-asserting egotism. He was the freest from that of all men who have ever engaged the attention of the nation."

—*Henry B. Rankin's Personal Recollections of Abraham Lincoln, 134*

## THE COOPER INSTITUTE SPEECH

"In October, 1859, Lincoln had an invitation from New York to deliver a lecture in the Cooper Institute, the subject to be of his own selection. He assented, and named, February, 1860, as the time; his subject to be a political one. He had misgivings at first as to his ability to interest an Eastern metropolitan audience. However, his old campaign interest and energy came back to him the more he became absorbed in the collection of data upon which to build his speech. He had repeated interviews and discussions in the office with Mr. Herndon, going over their stores of campaign literature. He was at length fully satisfied in his selection of his material and how much he should use in writing out the speech. The first and second drafts were cast aside, and the entire field traversed anew. Mr. Herndon remarked to me that Lincoln had gone over his subjects far too deeply for him to follow. He only offered suggestions. It was delivered Feb. 27, 1860. Horace White, while he did not hear it, said of it: 'As I read the conflicting pages of that speech, the conflict of opinion that preceded the conflict of arms, then sweeping upon the country like an approaching solar eclipse, seemed prefigured like a chapter of the Book of Fate. Here again was the Old Testament prophet, before whom Horace Greeley bowed his head, saying that he had never listened to a greater speech, although he had heard several of Webster's best.'"

—*Henry B. Rankin's Personal Recollections of Lincoln, 242 to 244.*

## LINCOLN AND DOUGLAS AS ORATORS

"In the elegance of diction and ornate rhetoric, the speeches of Demosthenes and Aechines, those of Pitt, Fox, and Burke, and those of Webster and Hayne, excelled beyond measure those of Lincoln and Douglas; but in clearness of statement, close logical reasoning, breadth of comprehension, thorough analysis, simplicity and directness in bringing their views to the attention and understanding of vast masses of people, no other public debates ever equaled them."—*Clark E. Carr, 'The Illini,' 257.*

Douglas said this of Lincoln: "Lincoln is an able and honest man, one of the ablest men of the nation. I have been in Congress sixteen years, and there is not a man in the Senate I would not rather encounter in debate."

—*In letter to Senator Wilson, when Douglas entered the Senate, after the Lincoln-Douglas debates of 1858.*



## THEO. ROOSEVELT'S TESTIMONY

"Lincoln was not only the greatest American, but also the greatest man, of the 19th century."—*Life of Thos. H. Benton*, 142.

## LORD CURZON ON THE GETTYSBURG SPEECH

"The finest speech in English of the last half century was delivered at Gettysburg, a speech made by a man who had been a country farmer and a district lawyer, which ranks among the glories and the treasures of mankind. I escape the task of deciding which is the masterpiece of British eloquence by awarding the prize to Abraham Lincoln."

—*Said at Cambridge University, Eng.*

## JUDGE BREESE ON LINCOLN

"For my single self, I have for a quarter of a century regarded Mr. Lincoln as the first lawyer I ever knew and of a professional bearing so high-toned and honorable, as justly and without derogating from the claims of others, entitling him to be presented to the profession as a model well worthy of the closest imitation."—*Memorial of the Illinois Bar*.

## ABRAHAM LINCOLN—BY GARFIELD

"A character so unique that he stands alone, without a model in history or a parallel among men. Born to an inheritance of extremest poverty; surrounded by the rude forces of the wilderness; wholly unaided by parents; only one year in any school; never, for a day, master of his own time until he reached his majority; making his way to the profession of the law by the hardest and roughest road; yet by force of unconquerable will and persistent, patient work, he attained a foremost place in his profession."

—*From address, "Lincoln and Emancipation," H. of R., Feb. 12, 1878.*

## HENRY WATTERSON ON LINCOLN

"Born as lowly as the Son of God, in a hovel; of what real parentage we know not; reared in penury, squalor, with no gleam of light, nor fair surroundings; a young manhood vexed by weird dreams and visions, bordering at times on madness; without a grace, natural or acquired; singularly awkward, ungainly, even among the uncouth about him; grotesque in his aspects and ways; it was reserved for this strange being, late in life, without name or fame, or preparation, to be snatched from obscurity, raised to supreme command at a supreme moment, and intrusted with the destiny of a nation."

—*Extract from address, December, 1893.*

## IMPORTANT CASES

"The freedom of the Negro Girl, Nance, before the Supreme Court of Illinois, in 1839; the Illinois Central Ry. case, 1849, involving the taxation of the road's property through McLean County, in which Lincoln won for the railway, and got a fee of \$5,000; the McCormack Reaper case, in Cincinnati, O., 1855, in U. S. Circuit Court, in which he was associated with Geo. Harding, the expert patent lawyer, of Philadelphia, Pa., and Edwin M. Stanton; opposed by E. N. Dickerson and Reverdy Johnson. (Lincoln's fee being \$2,000, his retainer, \$500, the largest retainer he ever received: he appeared for Manny, the defendant. It was an injunction and for damages, \$400,000 demanded); Duff Armstrong for murder; the Rock Island Bridge case. involving the question of whether a Ry. Co.



had a right to obstruct the Mississippi River with piers, Lincoln appearing for the Ry. Co., maintained that 'one man had as good a right to cross a river as another had to sail up or down it.' This was in 1859."

—*Tarbell's Life of Lincoln*, 257 to 278.

### LABOR SUPERIOR TO CAPITAL

"The world is agreed that labor is the source from which human wants are mainly supplied. There is no dispute upon this point. From this point, however, men immediately diverge. \* \* \* Labor is prior to, and independent of, capital; in fact, capital is the fruit of labor, and could never have existed if labor had not first existed; labor can exist without capital, but capital could never have existed without labor. Hence labor is the superior, greatly superior, of capital."

—*From address at Wisconsin State Agricultural Fair, Sept. 30, 1859.*

### COURTS SHOULD NOT BE FINAL

"If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties in personal actions, the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal. Nor is there, in this view, any assault upon the court or the judges."

—*From 1st. Inaugural; also Lincoln and Douglas's Debates.*

### UNION PERPETUAL—SECESSION UNLAWFUL

"I hold that, in contemplation of universal law and of the Constitution, the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our national Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself. Again, if the United States be not a government proper, but an association of States in the nature of a contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it, break it, so to speak; but does it not require all to lawfully rescind it? It follows from these views that no State, upon its own motion, can lawfully get out of the Union; that resolves and ordinances to that effect are legally void; and that acts of violence, within any State or States, against the authority of the United States, are insurrectionary or revolutionary, according to circumstances."—*From 1st. Inaugural.*

### HIS DOMESTIC AFFLICTIONS

"In the meantime, he had private sorrows and trials of a painfully afflicting nature. He had loved and been loved by a fair and estimable girl, Ann Rutledge, who died in the flower of her youth and beauty, and he mourned her loss with such intensity of grief that his friends feared for his reason. Recovering from his morbid depression, he bestowed what he thought a new affection upon another lady, who refused him. And finally, moderately prosperous in his worldly affairs, and having prospects of political distinction before him, he paid his addresses to Mary Todd, of Kentucky, and was accepted. But then tormenting doubts of the genuineness of his own affection for her, of the compatibility of



their characters, and of their future happiness came upon him. His distress was so great that he felt himself in danger of suicide, and feared to carry a pocket-knife with him; and he gave mortal offense to his bride by not appearing on the appointed wedding day. Now the torturing consciousness of the wrong he had done her grew unendurable. He won back her affection, ended the agony by marrying her, and became a faithful and patient husband and a good father. But, it was no secret, to those who knew the family well, that his domestic life was full of trials. The erratic temper of his wife not seldom put the gentleness of his nature to the severest tests; and these troubles and struggles, which accompanied him through all the vicissitudes of his life, from the modest home in Springfield to the White House, at Washington, adding untold private heartburnings to his public cares, and sometimes precipitating upon him incredible embarrassments in the discharge of his public duties, form one of the most pathetic features of his career."

—*Carl Schurz's Essay on Lincoln, No. 133 'Riverside Literature Series,' 20-21.*

(For a fine review of Lincoln's legal and political career, see Lyman Trumbull.)

### THE FIRST INVENTION

"The great difference between Young America and Old Foggy is the result of discoveries, inventions, improvements. These, in turn, are the result of observation, reflection and experiment. \* \* \* All nature, the whole world, material, moral and intellectual, is a mine; and in Adam's day, it was a wholly unexplored mine. Now, it was the destined work of Adam's race to develop, by discoveries, inventions and improvements, the hidden treasures of this mine. But Adam had nothing to turn his attention to the work. If he should do anything in the way of inventions, he had first to invent the art of invention, the instance at least, if not the habit, of observation and reflection. As might be expected, he seems not to have been a very observing man at first; for it appears he went about naked a considerable length of time before he even noticed that obvious fact. But when he did observe it, the observation was not lost upon him; for it immediately led to the first of all inventions of which we have any direct account—the fig-leaf apron."

—*Abraham Lincoln. Lecture on "Discoveries, Inventions and Improvements," at Springfield, Ill., Feb. 22, 1860.*

### TOWERING GENIUS

"Towering genius disdains a beaten path. It seeks regions hitherto unexplored. It sees no distinction in adding story to story upon the monuments of fame erected to the memory of others. It denies that it is glory enough to serve under any chief. It scorns to tread in the footsteps of any predecessor, however illustrious. It thirsts and burns for distinction; and if possible it will have it, whether at the expense of emancipating slaves or enslaving freemen. It is unreasonable then to expect that some man possessed of the loftiest genius, coupled with ambition to push it to its utmost stretch, will at some time spring up among us? And when such a one does, it will require the people to be united with each other, attached to the government and laws, and generally intelligent, to successfully frustrate his designs. Distinction will be his paramount object; and although he would willingly, perhaps more so, acquire it by doing good as harm, yet, that opportunity being past, and nothing left to be done in the way of building up, he would set boldly to the task of pulling down."

—*Speech by Lincoln, on 'The Machinations of Ambitious Men.' Jan. 27, 1837.*

S. P. CHASE: "Of all the great men I have ever known, Chase is equal to about one and a half of the best of them."



## STATUE OF LINCOLN UNVEILED IN LONDON

The recent unveiling of the Saint Gaudens statue of Lincoln in London attracted world-wide attention. Reports in the American Press were rather meager, but the Manchester Guardian, which has just arrived from across the seas, contains a very full account of the ceremony which, for the benefit of the readers of the National Enquirer, is herewith reproduced:

"The Saint Gaudens statue of Lincoln, the gift of the American to the British people, was unveiled this afternoon by the Duke of Connaught on the site presented by the Government in the Canning enclosure opposite Westminster Abbey. The event was made the occasion of an impressive demonstration of Anglo-American friendship. Before the ceremony there was a big meeting in the Central Hall, when Mr. Elihu Root, who came over from the Hague to make the presentation on behalf of his country, gave an address, fine both in spirit and language. Afterwards the Prime Minister spoke briefly, ending with a significant note when he said that, 'This torn and bleeding earth is calling today for the help of the America of Abraham Lincoln.'

"Lord Bryce, who of all living Englishmen perhaps is most highly honored in America, presided over the meeting. The American Ambassador and Colonel House were among the Americans on the platform, and among the distinguished people present were Lord Weardale, chairman of the Anglo-American Society, through which the gift of the statue was made; Lord Reading, Lord Crewe, Lord Beatty, Lord Phillimore, Lord Desborough, Sir Macnamara, and other members of the Government as well as many other representative people of both nations."

"Tho' Mr. Lincoln was a natural born lawyer, he had yet studied profoundly the principles of the common law."—*E. B. Washburne*.

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 ABBOTT'S TRIBUTE TO HIS WIFE

"My wife's conservatism tempered my radicalism, and to my reverence both for her sentiments and for her judgment I owe the fact that I have been able to move forward with a progressive age without disrespect for or embittered conflict with the men and women of more conservative temper. In times of success her ambition for her husband, always overrunning his achievement, has served to temper if not wholly to prevent my self-conceit. In time of failure, when I have wholly lost faith in myself, she never lost faith in me, and her courage forbade my discouragement. She died in Germany in 1907, six weeks before a golden anniversary would have been celebrated. Her dust reposes in the well-ordered cemetery at Hildesheim, shaded by the trees and covered with the carefully tended flowers which she loved so well. The monument we have chosen for her in this country is a cut-leaf maple, planted on our golden wedding day in our home grounds among the trees all of which were selected by her and planted under her direction. Only a living thing could memorialize one so full of life. I do not think her dead, nor have I lost her companionship. Her ambition for me keeps me young at seventy-eight; her faith in me still inspires me with faith in myself. And in every serious question which arises in life I ask myself, first, what would Jesus Christ counsel me to do, and, second, what would my wife counsel, and my answer to the second question helps me to get the desired answer to the first."—*Lyman Abbott's Reminiscences*, 76-7.



## ROBERT R. LIVINGSTON (1746-1813)

### THE LOUISIANA PURCHASE

"We have lived long, but this is the noblest work of our whole lives. The treaty which we have just signed has not been obtained by art or dictated by force. Equally advantageous to the two contracting parties, it will change vast solitudes into flourishing districts; from this day the United States take their place among the powers of the first rank. The English lose all exclusive influence in the affairs of America. Thus one of the principal causes of European rivalries and animosities is about to cease.

"The United States will re-establish the maritime rights of all the world, which are now usurped by a single nation. These treaties will thus be a guarantee of peace and concord among commercial States. The instruments which we have just signed will cause no tears to be shed; they prepare ages of happiness for innumerable generations of human creatures. The Mississippi and Missouri will see them succeed one another and multiply, truly worthy of the regard of Providence, in the bosom of equality under just laws, freed from the errors of superstition and the scourges of bad government."

Robert R. Livingston (1746-1813), speaking to Monroe and Marbois, thus estimated this treaty, which ranked next to the Declaration of Independence (to draft which he was one of the Committee out of five), and the adoption of the Constitution, events of which it was the logical outcome; but as a matter of diplomacy it was unrivalled, because it cost almost nothing. The committee was Livingston, Monroe and Pinckney, but the immediate agent in securing the transfer for \$15,000,000 was Livingston.

### JOHN K. HOSMER ON LIVINGSTON

"Jefferson never did better than in the selection of Robt. R. Livingston to represent America in this crisis (the negotiation in respect to the Louisiana Purchase). Of a distinguished line in which Scotch and Dutch were blended, he himself from an early age had shown remarkable powers and rendered extraordinary public services. He had been on the committee of five for drafting the Declaration of Independence; he had presided at the convention at which New York adopted the Federal Constitution, bringing about the favorable result by his influence. As Chancellor of New York he had administered the oath to Washington at his inauguration; and first of men had hailed him as he stood in the supreme place, 'Long live George Washington, President of the United States.' In the full strength of his powers he was now set to conduct a most arduous and embarrassing negotiation, which he carried through in a manner to confirm his title to high fame. When he finally left Europe, in 1805, Napoleon assured him of his regard, bestowing upon him one of those *tabatieres* (snuff-boxes) which in that day appeared, now and then, in connection with interesting events. This snuff-box, too, like the one described by Lucien, was set magnificently with diamonds, and had in its lid a miniature of Napoleon himself. American distinctions, too, were not wanting, and the Commonwealth of New York could not have chosen better than to set a statue of him, as she did at a later time, in the hall at Washington, as one of her two typical great men."

—*Jas. K. Hosmer, in his 'History of the Louisiana Purchase,' 113-15.*



## JOHN D. LONG (1838-1915), Massachusetts

### THE HERO OF THE CIVIL WAR, THE COMMON SOLDIER

"And when the drum beat, when the first martyr's blood sprinkled the stones of Baltimore, he took his place in the ranks and went forward. You remember his ingenious and glowing letters to his mother, written as if his pen were dipped in his very heart. How novel it seemed to him the routine of service, the life of camp and march! How eager the wish to meet the enemy and strike the first blow for the good cause! What pride at the promotion that came and put its chevron on his arm or its strap upon his shoulder!

"They took him prisoner. He wasted in Libby, and grew gaunt and haggard with the horror of his sufferings and with pity for the greater horror of the sufferings of his comrades who fainted and died at his side. He tunneled the earth and escaped. Hungry and weak, in terror of recapture, he followed by night the pathway of the railroad. He slept in thickets and sank in swamps. He saw the glitter of horsemen who pursued him. He knew the bloodhound was on his track. He reached the line; and with his hand grasping at freedom, they caught him and took him back to his captivity.

"He was exchanged at last; and you remember, when he came home on a short furlough, how weary and warworn he had grown. But he soon returned to the ranks and to the welcome of his comrades. They recall him now alike with tears and pride. In the rifle pits around Petersburg you heard his steady voice and firm command. Some one who saw him then fancied that he seemed that day like one who forefelt the end. He had just turned to give a cheer when the fatal ball struck him. There was a convulsion of upward hand. His eyes, pleading and loyal, turned their last glance to the flag. His lips parted. He fell dead, and at nightfall lay with his face to the stars. Home they brought him, fairer than Adonis, over whom the goddess of beauty wept. They buried him in the village churchyard under the green turf. Year by year his comrades and his kin, nearer than comrades, scattered his grave with flowers. Do you ask who he was? He was in every regiment and every company. He went out from every village, he sleeps in every burying-ground. Recall romance, recite the names of heroes, of legend and song, but there is none that is his peer."

—*The above is from an oration delivered in 1882, at Tremont Temple, Boston, to veterans of the Civil War.*

John D. Long, of Mass. (1838-19 ), born at Buckfield, Me., educated at Harvard, and Harvard Law School; Governor of Mass. and served three terms in Congress; Sec. of Navy under McKinley, after whose death resumed practice of law in Boston.

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## BENJAMIN HARRISON

"General Harrison was by far the ablest and profoundest lawyer among our presidents, none of them equaled him as an orator. His State papers were of a very high order. When history sums up the men who have held the great place of president of the United States, General Harrison will be among the foremost."

—*C. M. Depew, 'Memories of Eighty Years,' 140.*



## SIR JAMES MACKINTOSH (1765-1832), England

### LAW

"Law," said Dr. Johnson, "is the science in which the greatest powers of the understanding are applied to the greatest number of facts; and no one who is acquainted with the variety and multiplicity of the subjects of jurisprudence, and with the prodigious powers of discrimination employed upon them, can doubt the truth of the observation. \* \* \* The law of England has been chiefly formed out of the simple principles of natural justice by a long series of judicial decisions. \* \* \* There is not, in my opinion, in the whole compass of human affairs so noble a spectacle as that which is displayed in the progress of jurisprudence; where we may contemplate the cautions and unwearied exertions of wise men through a long course of ages, withdrawing every case, as it arises, from the dangerous power of discretion, and subjecting it to inflexible rules, extending the dominion of justice and reason, and gradually contracting within the narrowest possible limits the domain of brutal force and arbitrary will."

His defense of Jean Peltier for a libel against Napoleon, Howell's State Trials, Vol. 28, 566, before Lord Ellenborough, in 1803, must always rank as a display of intellectual power, unsurpassed in ancient or modern times. Peltier was convicted. During the week preceding the trial it was believed that the acquittal of Peltier would be considered in France as tantamount to a declaration of war against the First Consul.

### FREEDOM OF THE PRESS

"There is still one spot in Europe where man can freely exercise his reason on the most important concerns of society; where he can boldly publish his judgment on the acts of the proudest and most powerful tyrants. The press of England is still free. It is guarded by the free Constitution of forefathers. It is guarded by the hearts and arms of Englishmen, and, I trust I may venture to say, that if it be to fall, it will fall only under the ruins of the British empire. It is an awful consideration, gentlemen. Every other monument of European liberty has perished. That ancient fabric which has been gradually reared by the wisdom and virtue of our fathers still stands. It stands, thanks be to God, solid and entire, but it stands alone, and it stands amid ruins."

—*In behalf of Jean Peltier, a French royalist.*

### THE DUTY OF A JURY

"In the court where we are now met, Cromwell twice sent a satirist on his tyranny to be convicted and punished as a libeler; and in this court, almost in sight of the scaffold streaming with the blood of his sovereign, within hearing of the clash of his bayonets which drove out Parliament with contumely, two successive juries rescued the intrepid satirist (Lilburne) from his fangs, and sent out with defeat and disgrace the usurper's attorney-general from what he had the insolence to call *his court*! Even, then, gentlemen, when the law and liberty were trampled under the feet of a military banditti; when those great crimes were perpetrated on a high place and with a high hand against those who were the objects of public veneration, which more than anything else, break their spirits and confound their moral sentiments, obliterate the distinctions between right and wrong in their understanding, and teach the multitude to feel no longer any reverence for that justice which they



thus see triumphantly dragged at the chariot wheels of a tyrant; even then, when this unhappy country, triumphant, indeed, abroad, but enslaved at home, had no prospect but that of a long succession of tyrants wading through slaughter to a throne, *even then, I say, when all seemed lost, the unconquerable spirit of English liberty survived in the hearts of English jurors.* That spirit is, I trust in God, not extinct; and, if any modern tyrant were, in the drunkenness of his insolence, to hope to overawe an English jury, I trust and I believe that they would tell him: 'Our ancestors braved the bayonets of Cromwell; we bid defiance to yours.' *Comempsi Catiline gladios—non pertimes camtuos* (I have despised the daggers of Catiline, and I shall not fear yours).

"\* \* \* What could be such a tyrant's means of overawing a jury? As long as their country exists, they are girt round with impenetrable armor. Till the destruction of their country, no danger can fall upon them for the performance of their duty, and I do trust that there is no Englishman so unworthy of life as to desire to outlive England. But, if any of us are condemned to the cruel punishment of surviving our country—if, in the inscrutable counsels of Providence, this favored seat of justice and liberty, this noblest of human wisdom and virtue, be destined to destruction, which I shall not be charged with national prejudice for saying would be the most dangerous wound ever inflicted on civilization; at least let us carry with us into our sad exile the consolation that we ourselves have not violated the rights of hospitality to exiles, that we have not torn from the altar the suppliant who claimed protection as the voluntary victim of loyalty and conscience."

—*In defense of Jean Peltier, who was convicted, largely by the strong charge of Lord Ellenborough against the prisoner.*

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## ABRAHAM LINCOLN

"The antagonism between Mr. Seward and Mr. Chase, the secretary of the treasury, though rarely breaking out in the open, was nevertheless accute. Mr. Seward was one of the most charming of hosts and his conversation a liberal education; he was devoted to the president and made every possible effort to secure his renomination and election. Mr. Chase was doing his best to prevent Mr. Lincoln's renomination and secure it for himself. No president ever had a Cabinet of which the members were so independent, had so large individual followings, and were so inharmonious. The president's sole ambition was to secure the ablest men in the country for the departments which he assigned to them without regard to their loyalty to himself. One of Mr. Seward's secretaries would frequently report to me the acts of disloyalty or personal hostility on the part of Mr. Chase with the lament: 'The old man—meaning Lincoln—knows all about it and will not do a thing.'

"I had a long and memorable interview with the president. As I stepped from the crowd in his reception-room, he said to me: 'What do you want?' I answered: 'Nothing, Mr. President. I only came to pay my respects, and bid you good-by, as I am leaving Washington.' 'It is such a luxury,' he then remarked, 'to find a man who does not want anything. I wish you would wait until I get rid of this crowd.' He threw himself on the lounge and said: 'I am accused of telling a great many stories. They say that it lowers the dignity of the presidential office, but I have found that plain people, take them as you find them, are more easily influenced by a broad and humorous illustration than in any other way, and what the hypercritical few may think, I don't care.'

—*Chauncey M. Depew, 'Memories of Eighty Years,' 56-7.*



## JOHN MCSWEENEY (1824-1890), Ohio

LYING WITNESS: "God made him for a man, so let him pass."

MAXIM: "There is a maxim in the Latin language, which translated into English means, 'It is better that 99 guilty men be set free than that one innocent man be punished.' Now, that is couched in an old dead language; and I did not know what it meant, but I asked one of your High School boys, as I came into Court, what it meant, and he said it means as I have quoted it above."—*John McSweeney, in a criminal trial.*

### MASTER OF A JURY

McSweeney was the most perfect master of a jury, the trial judge, and the audience of a court-room, of any lawyer I ever knew. He had the Bible and Shakespeare at his tongue's end, and could use them both with great effect. A six-foot-three Irishman, he had just enough of pathos and wit combined to melt them to tears, and carry them on rhetorical flights, with his airy wit into the upper regions. He lived in Wooster, Ohio, all his life, and radiated from there, over the State, and nearly all the States, even in the Star Route case with Ingersoll, in the defense of Dorsey. His regular fee in a criminal case was \$500 per day. It is related that while defending a criminal for felony in Akron, Ohio, the court at the request of the attorneys on both sides, held a night's session, when McSweeney was to close in his argument to the jury. An opera company which was performing in the city had to shut their doors, as the argument of the great lawyer was the greater attraction; all went to hear McSweeney and the opera-house was empty.

—*The compiler of this work, who knew McSweeney.*

### THE RESPONSIBILITY OF A JUROR'S OATH

"Mr. Adolph Brown, you are one of this jury, and I want you to make up your mind that the prisoner at the bar is guilty of the heinous crime of murder, and that beyond *any* reasonable doubt; and his Honor will tell you what that is. And, sir, if you have such a doubt lingering in your mind, after hearing all the witnesses, seeing them and the manner in which they told their stories, and then send this poor, unfortunate man into eternity, by your verdict, you are a whited sepulchre! Remember the oath you took that *you* would try this man, and an impartial verdict render. You! You!! You!!! Not the other eleven men on this panel, but *you*. Never mind what they think. It is what *you* think. Don't compromise where a man's life is at stake. Render a verdict in this case, so that when you go home, and into your closet to commune with your Maker, you can be at peace with your God. If you do not, the thought will harrow your heart all through your days upon earth. Why, it is an awful responsibility. Think of it!"

I have seen many a strong man shake and tremble like a leaf under the spell, and the bringing right home to them the awful responsibility and position in which they found themselves.

—*The author of this work, who was very familiar with McSweeney's power when a student of the law, in Ohio, in the Seventies of the last century.*

### WENDELL PHILLIPS ON MCSWEENEY

"While at Ottawa, Ohio, I heard McSweeney in a criminal case. It was a masterly effort. He laid down such a solid foundation in his opening, defining a jury's duty in criminal trials, and pressed his claim home



so effectively on them, that I felt, if the case had the usual amount of conflicting testimony, he had won it without going further. This presentation of a jury's duty was as remarkable for what he did not claim as for anything else. He kept so carefully within the lines that every jurymen felt not only what he asked was fair and reasonable, but was hardly up to what the cases he cited would allow him to claim.

"Then came the analysis of the connections, relations and bearing of three promissory notes, intricate and exceedingly difficult to disentangle. But it was done so clearly, briefly, and with such daylight distinctness, that the laziest jurymen listened to every word, and the dullest one among them could not escape understanding and appreciating the impregnable logic of this part of his defense. This was a marvel of statement. He would make an excellent English minister to unravel a budget. Then the pure Saxon, very few dictionary words, and wit enough to relieve what was necessarily a somber argument without weakening the solemnity of his appeal; and just that amount of pathos, rising naturally and almost inevitably from the facts, as would melt a jury without making them feel that their feelings were being used to warp their judgment. It was masterly. Of course, it would not be called a great case; but in quality, McSweeney's argument takes rank with some of the great historic efforts."

#### THE CLEVELAND PRESS ON MCSWEENEY

" 'John McSweeney was one of the best speakers I ever listened to,' said a well-known attorney to a *Press* man. 'I remember the case in which he won his fame as an orator in Cleveland. It was the suit of Thomas Dowlin vs. The Second National Bank, to recover \$10,000 worth of bonds deposited with the bank and which had been stolen by a man who was formerly cashier. The case was tried three times. The first time the jury rendered a verdict for \$24,000 for plaintiff, the second time it disagreed and finally, at the May term, 1872, a verdict of \$13,000 in round numbers was secured. McSweeney's speech was one of the best efforts of his life. He was well-known for his play upon words and in his speech said, 'When this old Captain came thundering at the doors of the bank for his bonds, he was given A. Stone.' (Amasa Stone was at the time connected with the bank.) He drew a graphic picture of the alleged directors' meeting, called, as he said, 'for the purpose of gobbling up the bonds of the old Captain.' 'When the directors met,' said McSweeney, 'one of them arose and said, *Let us prey*, only they spelled it with an 'E' at that bank, instead of an 'A'.' Claspings his hands and closing his eyes, McSweeney offered up the alleged prayer and it brought down the house. Judge Stephenson Burke was defending the case, and McSweeney drove many a hot shot at him during the trial. His description of the directors' meeting was funny in the extreme, and he wound up by saying that they had got all ready to take the bonds when somebody suggested that there might be some legal impediment. One member rose and was asked where he was going. 'Never mind,' said he, 'I'll be back in a minute.' Soon after he came back, swinging his hat and saying, 'It's all right. I've been down to see Judge Burke and he says as long as we are within the scope of the bank's authority we are liable, but as soon as we get out of the scope into the scoop, we are not liable.' McSweeney was a hard worker, and I doubt if any lawyer in the country could compare with him in the argument of a criminal case.'—*Cleveland Press*, Jan., 1890, upon McSweeney's death.

#### THE DETROIT COLLECTOR ON MCSWEENEY

"McSweeney's manners were persuasive and captivating before he opened his mouth. He possessed a bold confidence that took his adversary by storm before a shot was fired; of wonderful resources, looking



far ahead. You had to watch him closely ere you were aware he had seized his objective point and put it down in ink. He used his own witnesses with a wonderful dexterity, terrified with the form of apparent rage, put a favorable construction on a damaging theory, and a liar never escaped the keenness of his intellectual sword. To those who did not know him, he seemed to lack something of geniality and *suaviter in modo*, but in a company of friends, and in his home, his manners were tender and gentle. As a conversationalist, he was a fountain where the Graces might have loved to pause and sip. He was a master of style, free from mannerisms. His language was the purest Saxon. His control and the modulation of his voice were in some respects the secret of his power. He understood the pitch and quality of tone in every shade of thought and emotion. If he desired to be sad or plaintive, the modulation was minor or semi-tonic; if inclined to irony, his voice waived upward and downward; if inclined to expressions of awe and sublimity, it had a level movement from note to note, like the repeated sounds of a deep toned bell. Sober in pathos, furious in repartee, jolly in humor, terrific in invective."—*The Collector, Detroit, Mich., Jan., 1890.*

### JOHN VAN BUREN'S TRIBUTE

In the campaign of 1856, the Democrats held a great mass-meeting at Salem, Ohio. John Van Buren, then at the zenith of his renown as a political orator, and in request everywhere, was secured for the occasion as the orator. When he had finished his great speech, Mr. McSweeney, who was present and only thirty-two years of age, was induced to take the stand and give them a short address. He had not spoken long when Mr. Van Buren turned to some one at his side and asked: "Who is that?" "That is John McSweeney, of Wooster," was the answer. "Why did you send to New York for a speaker when you have in Ohio such a speaker as McSweeney?" asked Mr. Van Buren.

### PARODY IN THE STAR ROUTE CASE

In the argument in 1883 of the Star Route case, in defense of Stephen W. Dorsey, in which he was associated with Robert G. Ingersoll, parodying on Poe's Raven, in describing the interview between Walsh and Brady, McSweeney said:

"Not the least obeisance made he,  
Not a moment stopped or staid he,  
Not even a parting damn to Brady,  
But stalked out the office-door;  
Only this, and nothing more!"

### GREAT READER AND WONDERFUL MEMORY

He gormandized books, and could with a single reading of a book, or once listening to a lecture, almost reproduce it. He could quote whole chapters from the Bible, and would frequently reproduce the tragic scenes from Shakespeare to a jury with telling effect. His reading outside of the law took a wide range, news, poetry, history, travel, science and the arts; theology, biography, the classics, and the Bible, and Shakespeare; and his conversation was delightful, instructive, entertaining and sparkling. At his home, of which he was fond, he was exceedingly hospitable, and was especially proud of his family. Shame and pretense he detested.

—*Author.*

### HIS MOTHER A SISTER OF DANIEL O'CONNELL

He was of Irish descent, his mother being a sister of Daniel O'Connell. The cholera having swept away his parents in his infancy, he was educated,



an orphan, at St. Xavier, Cincinnati, and Western Reserve colleges. He gained great reputation for efficiency in the classics. Read law with John Harris, of Canton, O., and located in Wooster, O., in 1845, and about 1865 acquired national renown as a criminal lawyer. He died in the town in which he located, in 1890, at the age of sixty-six.

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### ENGLISH AUTHORS MOST PLEASED BY AMERICAN ADMIRERS

"It is probably true that, in this country, English authors find their warmest and most impassioned admirers. It is as true of the mind as the eye, that distance lends enchantment to the view. There are no hues so soft and delicate as those with which the imagination invests that which is unseen or faintly discerned. Remoteness in space has the same idealizing effect as remoteness of time. The voice that comes to us from the dim past is sacred. We know but we do not feel the interval which separates Shakespeare from Scott, Milton from Wordsworth, Hume from Hallam. We know them only by those airy creations of the brain which speak to us through the printed page. Solitude and silence, too, are the nurses of deep and strong feeling. The imaginative element which exalts the love of Dante for Beatrice, and of Burns for his 'Mary in Heaven,' deepens the fervor of admiration with which the pale, enthusiastic scholar, in some lonely farmhouse in New England, hangs over a favorite author, who, though perhaps a living contemporary, is recognized only as an absolute essence of genius, wisdom or truth. The minds of men whom we see face to face appear to shine upon us darkly through the infirmities of a mortal frame. Their faculties are touched by weariness or pain, or some humiliating weariness of unhandsome passion thrusts its eclipsing shadow between us and the light of their genius. Not so much with those to whom they speak only through the medium of books. In these we see the products of those golden hours, when all that was low is elevated, when all that was dark is illumined, and all that was earthly is transfigured. Books have no touch of personal infirmity—theirs is undying bloom, immortal youth, perennial fragrance. Age cannot wrinkle, disease cannot blight, death cannot pierce them. The personal image of the author is quite as likely to be a hindrance as a help to his book. The actor who played with Shakespeare in his own 'Hamlet' probably did but imperfect justice to this wonderful play, and the next-door neighbor of a popular author will be very likely to read his books with a carping, censorious spirit, unknown to him who has seen the vision only in his mind."

—George S. Hillard, at a Banquet to Charles Dickens, by the 'Young Men of Boston,' Feb. 1, 1842.

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### THEODORE ROOSEVELT

"Roosevelt was a marvel of many sidedness. Besides being an executive as governor of a great State and administrator as civil-service commissioner and police commissioner of New York, he was an author of popular books, and a field naturalist of rare acquirements. He was also a wonderful athlete. I often had occasion to see him upon urgent matters, and was summoned to his gymnasium, where he was having a boxing match with a well-known pugilist, or else launching at his fencing master. The athletics would cease, to be resumed as soon as he had in his quick and direct way, disposed of what I presented."

—C. M. Depew, 'Memories of Eighty Years', 169-70.



## WAYNE MACVEAGH (1833-1917), Pennsylvania

### GERMANY AND THE UNITED STATES

"The German Embassy is accused of being the center of offensive activity. Every day some new form of illegal action is alleged to emanate from it. One day they are charged with forging passports. Another day one of their agents is charged with blowing up a bridge connecting the United States with Canada. Another day they are said to have furnished false affidavits as to the character of the cargo of the *Lusitania*, and in Berlin they have even descended to the lowest depths of ignominy, for they have portrayed the President of the United States as bribed by British gold, while in truth no more long-suffering Executive, no more indulgent and peace-loving President ever filled his great office. In pursuit of peace of good relations with Germany, he has, quite unwittingly, no doubt, subjected our own country to such indignities as no free and high-spirited people ought to have endured. The simple truth, which he has been so unwilling to recognize, is that there exists an impassable chasm between a *citizen* of the United States and a subject of the German Emperor, and there is no possible political alchemy whereby the political standards of the one can be transmuted into the political standards of the other. No matter where a man is born or how he is reared, when he comes to manhood he instinctively prefers to be a *citizen* or a *subject*. Our fathers preferred, and we ourselves and our children all prefer, to be free citizens, but we do not for that reason deny to anybody else the privilege of preferring to be the obedient subject of a Kaiser and a Military Caste. We only ask them in all fairness to themselves and to us to make their choice, to be loyal either to the fundamental principles of our Government or those of the Government of the Kaiser, and to believe that they cannot be half loyal to the one and half loyal to the other. They must be wholly American or wholly German, and if they really prefer the German system of government, they should return thither and enjoy it; but if they propose to continue to live here, then they must be loyal to the American system, and there is no possibility for them of mistaking what that system is. Thomas Jefferson declared it to the whole world when he said the just rights of all governments depend upon the consent of the governed, and Abraham Lincoln at Gettysburg, in a few words, stamped it forever upon the history of mankind, in his immortal aspiration, that government of the people, by the people and for the people should never perish from the earth. Whoever accepts without reservations those two principles of government is a loyal American. Whoever pretends to accept them and is at heart disloyal to them is unworthy of American citizenship and ought to be deprived of it, for it is an impassable chasm which those honestly on one side can never pass over to the other."

—*Wayne MacVeagh, 'The Impassable Chasm,' in North American Review, July, 1915; pp. 33-34.*

### J. S. BLACK'S REPLY TO MACVEAGH

"My friend from Dauphin (MacVeagh) spoke of legislation under the figure of a stream, which he said, ought always to flow with crystal water. It is true that the Legislature is the fountain from which the current of our social and political life must run, or we must bear no life; but as it now is, we keep it merely as a cistern for foul toads to knot and gender in. He has described the tree of liberty, as his poetic fancy sees it, in the good time coming, when every man shall rest under its shade,



and singing birds shall inhabit its branches and make most agreeable music. But what is the condition of that tree now? Weary men do, indeed, rest under it, but they rest in their unrest, and the longer they remain there the more weary they become. And the birds—it is not the woodlark, nor the thrush, nor the nightengale, nor any of the musical tribe, that inhabit the branches of our trees. The foulest birds that wing the air have made it their roosting-place, and their obscene droppings cover all the plains about them—the kite, with his beak always sharpened for some crude repast; the vulture, ever ready to swoop upon his prey; the buzzard, digesting his filthy meal and watching for the moment when he can gorge himself again upon the prostrate carcass of the Commonwealth. And the raven is hoarse that sits there croaking despair to all who approach for any clean or honest purpose.”

—*Remarks in Constitutional Convention which adopted The Pennsylvania Constitution of 1873.*

### THE ABUSE OF THIEVES IS COMMENDABLE

“In these days the abuse of thieves is the only decoration in our public life worth the winning, or the wearing, and it is the surest possible passport to the good opinion of honest men.”

—*Said during the Star Route prosecutions, while Wayne MacVeagh was attorney-general of the United States, in 1883. MacVeagh graduated at Yale; was Minister to Turkey (1870-1); chief counsel, 1903, for the Hague Tribunal; Minister to Italy (1893-7); Attorney-General, under Garfield, 1881.*

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### JAS. T. BRADY ON CHAS. GOODYEAR

“That Goodyear expended thousands upon thousands in prosecuting his experiments in India rubber is quite true, but it is just as true that he expended little on himself. There is one great fact to demonstrate that he sunk his means in experiments, namely, that he died in debt, which his assets cannot pay. Now what became of his money? Did he spend it in pleasure? Had he any costly vices or habits? On the contrary, he was a small, attenuated, sickly man, with a complexion intensely sallow; pale, a weak stomach, faltering limbs, and feeble almost as a puny child. Aside from love of family and friends he had but one worldly idea, that was India rubber. It was the sole object of his study and occupation. Money could purchase little or nothing for the gratification of such a man.”

—*Before the Committee of the House of Representatives, advocating the extension of Goodyear patents.*

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### LIBEL

“The fact that a libel is published in a newspaper on the communication of a correspondent is not admissible in evidence to mitigate damages. In an early case in Pennsylvania, the court quaintly said: ‘It will not be denied that if one designedly bespatters another’s clothes with filth as he passes the street, though at the instigation of a third person, he would be liable for damages. And shall a printer with his types blacken the fairest reputation—the choicest jewel we enjoy—and go scott-free, merely because he has told the world that the paper is inserted at the request of another?’—*Runkle v. Meyer*, 3 *Yates*, 518.



## JAMES MADISON (1751-1836), Virginia

### STATE CANNOT SECEDE

Could a State once adopt the Constitution and then withdraw from the Union if not satisfied? Madison's reply was prompt and decisive. No such a thing could ever be done. A state which had once ratified was in the federal bond forever. The Constitution could not provide for nor contemplate its own overthrow. There could be no such thing as a constitutional right of secession.—*The Author.*

—*James Madison's advice to Hamilton, July 26, 1787, when speaking of the ratification of the Constitution.*

Entered Princeton University at 17, graduating at 20—and during his college course allowed himself but three hours' sleep. Says John Fiske: "He was the constructive thinker who played the foremost part among the men who made the Constitution." "The wisest of our Presidents, except Washington," said Webster.—*The Author.*

### A SUPREME COURT NEEDED

"The National supremacy ought also to be extended, as I conceive to the judiciary department. If those who are to expound and apply the laws are connected by their interests and their oaths with the particular States wholly, and with the Union, the participation of the Union in the making of the laws may be possibly rendered unavailing. It seems at least necessary that the oaths of the judges should include a fidelity to the general, as well as local, Constitution; and that an appeal should lie to some national tribunal in all cases to which foreigners, or inhabitants of other States, may be parties. The admiralty jurisdiction seems to fall within the purview of the National Government."

—"Debates and Correspondence," Vol. 2, p.714—written a month before the meeting of the Federal Convention—addressed to Geo. Washington.

### MADISON—ONE OF FIVE TO WHOM WE OWE THE CONSTITUTION OF THE U. S.

"In constructing the National Government there are five men distinguished above all others—Washington Madison, Hamilton, Jefferson and Marshall; but for Washington, doubtless independence could not have been won, and the Constitution, consequently, not adopted; Madison was the constructive thinker, foremost among those who made that instrument, and by speech and pen secured its ratification; Hamilton surpassed Madison, in his advocacy of it and in practical construction, and in financial matters, took the lead—but his boldness alarmed many people who feared a despotism; others, however, were equally afraid of democracy, because of France overturning society and setting up the guillotine; here came in Jefferson's work, and it was in his Presidency that loyalty to the Union may be said to have taken root; and under Marshall's coherent judicial decisions, the national powers of the Constitution were established, while still protecting State Rights—for a third of a century, he as Chief Justice, finished the glorious work."

—*Adapted from 1 John Fiske's 'Historical and Literary Essays,' 185-6.*

### MADISON AND GALLATIN

"After long study of the prominent figures in our history, I am more than ever convinced that for combination of ability, integrity, knowledge,



unselfishness, and social fitness, Mr. Gallatin has no equal. He was the most fully and perfectly equipped statesman we can show. Other men, as I take hold of them, are soft in some spots and rough in others. Gallatin never gave way in my hand or seemed unfinished. That he made mistakes I can see, but even in his blunders he was respectable. I cannot say as much for his friends Jefferson, Madison, and Monroe, about whom I have been for years hard at work. In regard to them I am incessantly forced to devise excuses and apologies, or to admit that no excuse will avail. I am at times almost sorry that I ever undertook to write their history, for they appear like mere grasshoppers kicking and gesticulating on the middle of the Mississippi River. There is no possibility of reconciling their theories with their acts, or their extraordinary foreign policy with dignity. They were carried along on a stream which floated them, after a fashion, without much regard to themselves."

—*From letter of Henry Adams to Sam'l J. Tilden, Wash., D. C., Jan. 24, 1883; '2 Tilden's Letters and Literary Memorials,' 629-30.*

### JEFFERSON'S ESTIMATE OF

"My successor (Madison), represents the purest principles of republican patriotism and adds a wisdom and a foresight second to no man on earth. \* \* \* He is our ablest statesman. \* \* \* Such a mind as his, fraught with information and with matter of reflection, can never know *ennui*."

At one time, when Hamilton had made an argument for a strong national government, Jefferson urged Madison in a letter to reply to him, as he was the only man in the Union who was equal to the task.

—*Author.*

### HARD STUDENT AT PRINCETON

"During Madison's two years at Princeton, where he graduated in 1772, he allowed himself but three hours' sleep, and devoted almost all the rest of the day to study."—*Parton's Jefferson, 593.*

### POVERTY OF MADISON

'Monroe died bankrupt, and filled the office of a justice of the peace, after his Presidency. Mrs. Madison knew what it was to want bread. Before Congress had purchased her husband's papers, Mrs. Madison was in a state of absolute poverty, and sometimes suffered for the necessities of life.'—*Parton's Jefferson, 742.*

### RESUME OF HIS LIFE

"Madison was one of the most eminent, accomplished, and respected of American statesmen. In the Va. legislature, 1784, was chiefly instrumental in securing religious liberty; active in securing the Convention of 1787, which framed the Constitution; acted with Jay and Hamilton in writing the 'Federalist;' chief author of the 'Virginia plan,' which even went some way toward disregarding state rights; suggested the compromise under which, whether in apportioning taxation or representation, slaves were regarded as population and not chattels, but 5 were reckoned as 3 persons, which secured the adoption of the Constitution by the slave-holding states. A month's discussion was neces-



sary before the Va. Convention was brought to ratify the Constitution, and that only by 89 votes to 79. He was elected to the 1st National Congress; had done as much as any man to secure adoption of the Constitution, but now sought to limit the powers of the government to the strict letter; became a leader of the Jeffersonian party, which made him Sec. of State, in 1801; and in 1809 was made President, retiring in 1817 to his Montpelier home, in Va., where he died in 1836, in his 85th year.

"Modest, reserved, courteous, kindly, and pleasant, Madison was not a brilliant man, but a statesman of eminent ability and purity of character."

—*See Rives' Life of Madison, in 3 vols. (1859-68).*

#### PATRICK HENRY ON MADISON

"I can forgive anything else in Mr. Jefferson, except his corrupting Mr. Madison."—*2 Beveridge's John Marshall, 79, note 1.*

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#### THE GOVERNMENT'S DUTY TO WRONGED FOREIGNERS DOMICILED IN THE UNITED STATES

"Some suggestions growing out of this unhappy incident (the lynching of Italians at New Orleans in 1891), are worthy the attention of Congress. It would, I believe, be entirely competent for Congress to make offences against the treaty rights of foreigners domiciled in the United States cognizable in the Federal Courts. This, however, has not been done, and the Federal officers and courts have no power in such cases to intervene, either for the protection of a foreign citizen or for the punishment of his slayers. It seems to me to follow, in this state of the law, that the officers of the State charged with police and judicial powers in such cases must in the consideration of international questions growing out of such incidents, be regarded in such sense as Federal agents, as to make this Government answerable for their acts in cases where it would be answerable if the United States had used its constitutional power to define and punish crimes against treaty rights."

—*President Benjamin Harrison, in his Message to Congress, Dec. 9, 1891, relating to the lynching of Italians at New Orleans, La., in that year.*

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#### THREE SAYINGS OF PRESIDENT McKINLEY

"I summon all honest men, all patriotic, all forward-looking men, to my side. God helping me, I will not fail them, if they will but counsel and sustain me."—*From Inaugural Address 1901.*

"Those twin heresies—free trade and free silver."—*From Speech.*

"Rebellion may delay, but can never defeat the American Flag's blessed mission of liberty and humanity."

—*At Cliff Haven, N. Y., referring to the Philippines.*

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#### CIVILIZATION

"The reason why the race moves slowly is because it must move altogether. It is not the knowledge of the great men, the skill of great orators, the philosophy of the great sages that makes civilization. There are no orators today as persuasive as Cicero, no philosophers or wise men greater than Aristotle or Plato. Yet civilization was not of their day, but of ours."—*Anon.*



LORD MANSFIELD, WILLIAM MURRAY (1705-1793),  
England

POPULARITY

"I come now to speak upon what, indeed, I would have gladly avoided, had I not been particularly pointed at, for the part I have taken in this bill. It has been said by a noble lord on my left hand that I likewise am running the race of popularity. If the noble lord means by popularity, that applause bestowed by after ages on good and virtuous actions, I have long been struggling in that race: to what purpose, all-trying time can alone determine. But if the noble lord means that mushroom popularity, which is raised without merit, and lost without a crime he is much mistaken in his opinion. I defy the noble lord to point out a single action in my life in which the popularity of the times ever had the smallest influence on my determinations. I thank God I have a more permanent and steady rule for my conduct—the dictates of my own breast. They who have foregone that pleasing adviser, and given up their mind to be the slave of every popular impulse, I sincerely pity. I pity them still more, if their vanity leads them to mistake the shouts of a mob for the trumpet of fame. Experience might inform them, that many, who have been saluted with the huzzas of a crowd one day, have received their execrations the next; and many, who, by the popularity of their times have been held up as spotless patriots, have, nevertheless, appeared upon the historian's page, when truth has triumphed over delusion, the assassins of Liberty. When then the noble lord can think I am at a loss to determine. Besides I do not know that the bill now before your lordships will be popular; it depends much upon the caprice of the day. It may not be popular to compel people to pay their debts; and in that case, the present must be a very popular bill. It may not be popular neither to take away any of the privileges of parliament: for I very well remember, and many of your lordships may remember, that not long ago the popular cry was for the extension of privilege; and so far did they carry it at that time, that it was said the privilege protected members even in criminal actions; nay, such was the power of popular prejudices over weak minds, that the very decisions of some of the courts were tinged with that doctrine. It was undoubtedly an abominable doctrine; I thought so then, and I think so still; but nevertheless, it was a popular doctrine, and came immediately from those who were called the friends of liberty, how deservedly, time will show. True liberty, in my opinion, can only exist when justice is equally administered to all; to the king, and to the beggar. Where is the justice then, or where is the law that protects a member of parliament more than any other man, from the punishment due to his crimes? The laws of this country allow of no place, nor any employment, to be a sanctuary for crimes; and where I have the honor to sit as a judge, neither royal favor, nor popular applause shall ever protect the guilty."—*On the Delays of Justice—Reply to Pitt.*

A SIMILE

"There is nothing so unlike as a simile, and nothing more apt to mislead." (Spoken of in certain writers likening one estate to another.)

HOW TO MAKE A GREAT LAWYER

"The best thing to make a great lawyer is great poverty."



## LORD HARDWICKE

"A really great and wonderful man in our profession was Lord Hardwicke; a wonderful character; became Chief Justice of England, and Chancellor, from his own abilities and virtues."—*Said by Mansfield.*

## DUNNING'S RETORT TO MANSFIELD

"Oh! if that be law, Mr. Dunning, I may *burn* my law books!"  
 "Better read them, my Lord," was the sarcastic and appropriate rejoinder.

## A TOAST .

"Old books and young friends." (This was a favorite toast of Mansfield's.)

## MACAULAY ON MANSFIELD

"This distinguished person (Murray) far surpassed Pitt in correctness of taste, in power of reasoning, in depth and variety of knowledge. His parliamentary eloquence never blazed into sudden flashes of dazzling brilliancy; but its clear, placid, and mellow splendor was never for an instant overclouded. Intellectually he was, we believe, fully equal to Pitt; but he was deficient in the moral qualities to which Pitt owed most of his success. Murray wanted the energy, the courage, the all-grasping and all-risking ambition which make men great in stirring times. His heart was a little cold, his temper cautious, even to timidity, his manners decorous even to formality. He never exposed his fortunes or his fame to any risk which he could avoid. At one time he might, in all probability, have been Prime Minister. But the object of his wishes was the judicial bench. The situation of Chief Justice might not be so splendid as that of first lord of the treasury; but it was dignified; it was quiet; it was secure; and, therefore, it was the favorite situation for Murray."

—*Macaulay, on the Earl of Chatham, 2 Essay, 247-8. (Macaulay was called to the Bar, in 1826, and joined the Northern Circuit, at Leeds.)*

(For John Quincy Adams' Criticism of Mansfield, see J. Q. Adams.)

## SLAVERY

"The air of England has long been too pure for a slave, and every man is free who breathes it."

## LIBEL

"The greater the truth, the greater the libel."

LORD MANSFIELD: "Certain of his judgments were of such transcendent power that his hearers were lost in admiration of the strength and stretch of the human understanding."—*Mr. Justice Buller.*

## JUSTICE

"*Justitia fiat ruat coelum.*" (Let justice prevail though the heavens fall.)—*A motto of Mansfield's.*

## CONSCIENCE

"Conscience, my Lords, is not controlled by human laws nor amenable to human tribunals. Persecution or attempts to force conscience will never produce conviction, and can only be calculated to make hypocrites or martyrs."

—5 Lord Chancellors, (Article 'Pratt'—Lord Camden), 287.



Harrison v. Evans,—as to whether a dissenter was liable to a fine for not serving a corporate office which he was disqualified from serving—not having taken the sacrament of the Lord's Supper, according to rites of the Church of England. Mansfield reversed the fine of 600 pounds by the City Courts of London. The foregoing is part of one of the finest speeches to be found in the books.

### MANSFIELD ON MACAULAY

"If I was as cocksure of one thing in the world as Thomas Babington Macaulay is of everything, I would be the happiest man of my acquaintance."

JURISPRUDENCE: "The history of a country cannot be well understood without the study of its jurisprudence, without learning minutely what great magistrates actually did in aiming to improve the institutions over which they preside."

Gibbon's masterly sketch of the Roman Civil Law is the most interesting part of his great work."—*3 Campbell's Life of the C. J.*, 1291.

### RESUME OF HIS CAREER

William Murray (afterwards Lord Mansfield) was born in 1705, and died in 1793, in his 89th year. Was solicitor-general of England for 12 years, (1742-54); attorney-general, 2 years (1754-56); Chief Justice 32 years (1756-88). Became the most distinguished advocate in England; persecuted Scotch peers, his cousins, for treason against King George; was the rival of the elder Pitt (Lord Chatham)—the greatest parliamentary orator England ever produced; was raised to be the highest criminal judge of the realm; refused the Lord Chancellorship, repeatedly; without office, directed the measures of successive cabinets; and what was far more glory, framed the commercial code of his country. His income at the time of his death, from his mortgages, was \$150,000 a year. Thought Aristotle the greatest philosopher and master—not only in reasoning, but of politics and literary criticism, who had yet appeared. He read systematically all that had been written upon the subject of oratory—made himself familiar with all the ancient orators; Cicero was his favorite, said there was not an extant oration of that Roman orator which he had not, while at Oxford, translated into English and retranslated it into Latin. Though busy with his judicial duties, found time to keep up his acquaintance with the Greek and Latin classics and the new publications; but two cases were decided by him, during his 32 years in the highest common law court in England, were even criticised—all the rest were unanimously adopted by his brethren associates.

### JUDGE JOSEPH STORY'S TRIBUTE

"During a period of 37 years the powerful mind of Mansfield was engaged in clearing up and laying out the whole province of commercial law. And to his great learning, enlarged views, and sound judgment, the commercial law of England at the present day is more indebted than to any single mind. The doctrines of 'Insurance' were almost created by him in this country. Into every department of the Common Law he infused the spirit of equity; engrafted on its Saxon and Norman limbs the best scions of continental jurisprudence; expanded its principles and liberalized its nature, bursting open and overflowing with equity the narrow channels of Feudalism. But he was not called upon to administer Admiralty or Prize Law, and he has left but few cases in which their principles are laid down or illustrated—and even in those few they have pressed into the reluctant mould of the criminal law."

—*1 Story's 'Life and Letters,'* 224.



## LORD THURLOW ON MANSFIELD

When Lord Mansfield died, George III., who was reputed to be insane, at that time remarked: "The d——st rascal in my kingdom dies today." Lord Thurlow, upon hearing this observation of George III., said: "Did he say that? Then George III. is sane."

—*Related by Judge E. H. East, of Nashville, Tenn., to the compiler, Dec. 15, 1896.*

## "ABAFI THE BINNACLE"

Mansfield was presiding at a trial consequent upon a collision of two ships at sea, when a common sailor, as a witness said: "At the time I was standing abaft the binnacle;" whereupon his Lordship, with a desire to master the facts, observed: "You say you were standing 'abaft the binnacle;' now tell me where is 'abaft the binnacle?'" This was too much for the gravity of "the salt," who immediately before climbing into the witness-box, had taken a copious draught of rum, removed his eyes from the Bench, turned upon the crowded court with an expression of intense amusement, and exclaimed at the top of his voice, "He's a pretty fellow for a Judge! Bless my jolly old eyes! he wants me to tell him where 'abaft the binnacle' is!" Not less amused than the witness, Mansfield rejoined: "Well, my friend, you must fit me for my office by telling me where 'abaft the binnacle' is; you've already shown me the meaning of 'half-seas-over'."—*Stories about Lawyers, 372-3.*

## BANCROFT ON MANSFIELD

"Mansfield, to whose authority the House of Lords paid greater attention than to that of any man living, though he entered public life as a Whig, stood ready to serve the cause of power, even without sharing it. Cautious even to timidity, his understanding was clear, but his heart was cold. The childless man had been unsuccessful in love, and formed no friendships. His vast accumulations of knowledge, which a tenacious memory stored in its hundred cells, ever came forward at his summons. His lucid arrangement assisted to bring conviction; and he would expound the intricacies of law, or analyze reasonings and evidence, with an intelligent smile on his features that spoke plainly the perfect ease with which he did it. Ornament seemed to flow so naturally from his subject that, while none could speak with more elegance, it seemed impossible for him to speak with less. His countenance was beautiful, inspiring reverence and regard; his eye gleamed with light; his voice was acutely clear, yet varied and musical. He had been a member of the cabinet when the plan of the 'Stamp Act' was adopted; his legal opinion lay the foundations; and he now vindicated its rightfulness of which he saw the denial invoked the reform of the British constitution."

—*3 Bancroft's History of the U. S., 190.*

## YOU MAY DEAL; BUT I SHALL LEAD

Sir Frederick Thesiger, afterwards Lord Chelmsford, being angered in the conduct of a case, objected to irregularity of a learned sergeant who repeatedly put leading questions in examining his witnesses. "I have a right," maintained the sergeant, doggedly, "to deal with my witnesses as I please." "To that I offer no objection," retorted Sir Frederick; "You may *deal* as you like; but you shan't *lead*"



## JOHN MARSHALL (1755-1835), Virginia

### MADISON

"If eloquence includes persuasion by convincing, Madison was the most eloquent man I ever heard."—*John Marshall*.

TAX: "The power to tax is the power to destroy."

"We shall remain free, if we do not deserve to be slaves."

"Separated from Europe, we mean not to mingle in her quarrels."

### THE COURTS

"The judicial department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not to the last degree important that he should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience?"

—*In Virginia Constitutional Convention, 1829-30, at 75 yrs. of age.*—4 *Beveridge's Life of Marshall*, 493.

### A CORRUPT JUDICIARY

"I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent judiciary."

—*In Beveridge's Marshall*, 461.

### AN IDEAL JUDGE

"The acme of judicial distinction means the ability to look a lawyer straight in the eye for two hours and not hear a d——d word he says!" John Marshall to John B. Gibson, when the latter was a young man, and asked what his idea of a great Judge was.

—4 *Beveridge's Marshall*, 83.

### CORN KERNELS AND ARMY COLONELS

Speaking of some drunken colonels, Marshall designated them as follows:

"The corn was full of kernels and the colonels were full of corn!"

—4 *Beveridge's Marshall*, 83.

### LEGISLATURE AND U. S. COURTS

"If the legislature of the several States may, at will, annul the judgments of the U. S., and destroy the rights acquired under these judgments, the Constitution itself becomes a solemn mockery, and the nation is deprived of the means of enforcing the laws by the instrumentality of its tribunals."

—*John Marshall, in U. S. v. Peters, 5 Cranch, 135.*

### A HERO WORSHIPPER

"A desire to know intimately those illustrious personages who have performed a conspicuous part in the great theatre of the world is, perhaps, implanted in every human bosom. We delight to follow them through the various critical and perilous situations in which they may have been



placed, to view them in the extremes of adverse and prosperous fortune, to trace their progress through all the difficulties they have surmounted, and to contemplate their whole conduct at a time, when the power and pomp of office having disappeared, it may be presented to us in the single garb of truth."—*John Marshall, in his life of Washington.*

### WIRT'S LIFE OF HENRY

"Wirt's Life of Patrick Henry (first published in 1817) does not do full justice to its subject. The popular idea of Mr. Henry gathered from Mr. Wirt's book was that of a great orator. He was that and much more, a learned lawyer, a most accurate thinker. If I were called upon to say who of all the men I have known had the greatest power to convince, I should perhaps say Mr. Madison, while Mr. Henry had without doubt the greatest power to persuade. Wirt relied largely for his materials upon Thomas Jefferson—an adverse critic of Patrick Henry."

—*John Marshall, in 2 Wm. Wirt Henry's Patrick Henry.*

### MARSHALL ON JEFFERSON

"To Mr. Jefferson, whose political character is better known than that of Mr. Burr, I have felt almost insuperable objections. His foreign prejudices seem to me totally to unfit him for the Chief Magistracy of a nation, which cannot indulge those prejudices without sustaining deep and permanent injury. In addition to this solid and immovable objection, Mr. Jefferson appears to me to be a man who will embody himself with the House of Representatives. By weakening the office of President, he will increase his personal power. He will diminish his responsibility, sap the fundamental principles of the government and become the leader of that party which is about to constitute the majority of the legislature. The morals of the author of this letter to Mazzei (in which Jefferson calls the Federalists 'an Anglican, monarchical and aristocratical party,') cannot be pure. Your representation of Mr. Burr, with whom I am totally unacquainted, shows that from him still greater danger than even from Mr. Jefferson may be apprehended. Such a man as you describe is more to be feared, and may do more immediate, if not greater mischief. Believing that you know him well, and are impartial, my preference would certainly be for him, but I can take no part in this business. I cannot bring myself to aid Mr. Jefferson.

"Perhaps respect for myself should in my present situation deter me from using my influence (if, indeed, I possessed any), in support of either gentleman. Altho' no consideration could induce me to be the Secretary of State while there was a President whose political system I believed to be at variance with my own; yet this cannot be so well known to others, and it might be suspected that a desire to be well with the successful candidate had in some degree governed my conduct."

—*John Marshall to Hamilton, Jan. 1, 1801. 6 Hamilton's Works, 501; 2 Beveridge's Life of Marshall, 537-8.*

### U. S. SUPREME COURT ABOVE CONGRESS

"It is a position too plain to be contested that the Constitution controls any legislative act repugnant to it; or that the legislature may alter the Constitution by an ordinary act. Between these alternatives there is no middle ground. The Constitution is either a superior, paramount law, unchangeable by ordinary legislative acts, and like other acts, is alterable when the legislature shall choose to alter it. If the former alternative be true, then a legislative act contrary to the Constitution



is not law; if the latter part be true, then written Constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.”—*Chief Justice Marshall—in Marbury v. Madison.*

### FRANCIS WALKER GILMER ON MARSHALL

“Everyone has heard of the gigantic abilities of John Marshall; as a most able and profound reasoner he deserves all the praise which has been lavished upon him. His mind is not very richly stored with knowledge, but it is so creative, so well organized by nature, or disciplined by early education and constant habits of systematic thinking, that embraces every subject with the clearness and facility of one prepared by previous study to comprehend and explain it.”—*2 Beveridge’s Marshall, 178.*

### GUSTAVUS SCHMIDT ON MARSHALL

“Mr. Marshall can hardly be regarded as a learned lawyer. His acquaintance with the Roman jurisprudence as well as with the laws of foreign countries was not very extensive. He was what is called a common law lawyer, in the best and noblest acceptance of that term.”  
—*2 Beveridge’s Marshall, 178.*

### JUDGE STORY’S ANECDOTE ON MARSHALL

“Mr. Samuel Dexter was once in company with Fisher Ames and Chief Justice Marshall. The latter commenced a conversation, or rather an opinion (for he was almost *solus* in the dialogue) which *lasted* some three hours. On breaking up, the two former commenced, on their way homeward, praising the depth and learning of their noble host. Said Ames, after a short talk, ‘To confess the truth, Dexter, I have not understood a word of his argument for half an hour.’ ‘And I,’ good humoredly rejoined Dexter, ‘have been out of my depth for an hour and a half.’”  
—*2 Story’s Life and Letters, 504.*

### JUDGE JEREMIAH SMITH ON HIS POWER AS A DEBATER

“Judge Smith used to give a remarkable instance of Judge Marshall’s ability as a debater in Congress. There had arisen a discussion on some intricate and perplexing subject in which several prominent members of the House, and among them Mr. Gallatin, had taken part. After they had spoken, Mr. Marshall rose and in a few words laid the whole matter open with such perfect distinctness that Mr. Gallatin, who had just spoken on the opposite side, exclaimed, ‘Mr. Speaker, we are all wrong; the gentleman from Virginia is right,’ and the whole House was satisfied. It is said that Judge Marshall never in his life took up more than three quarters of an hour in a single speech.”

—*Morrison’s Life of Jeremiah Smith, p. 138.*

### MARSHALL MADE HISTORY

“Marshall, in a political way, made history, as by his decisions through the Supreme Court he developed the Constitution by interpretation. When appointed Chief Justice, the Supreme Court had neither the respect of the bar nor the people; had so utterly failed that John Jay, the first Chief Justice, resigned. Any lawyer who has carefully read Marshall’s most important decisions cannot consider them great documents, but must regard them as great State papers. They are essentially the products of a mind of a great constructive statesman. Marshall laid the foundation of our jurisprudence when he handed down the decision that no law passed by Congress or State Legislature should be considered



constitutional, if passed on unfavorably by a majority of the members of the United States Supreme Bench, as in *Marbury v. Madison*, *Fletcher v. Peck*, *McCulloch v. Maryland*, etc. Constructive treason must necessarily be the overt act itself, as decided in the trial of Aaron Burr. That decision has held good to this day."

—*Albert J. Beveridge, in speech on 'Marshall,' Kansas City, Mo., Bar Ass'n. Mar. 12, 1921.*

### WHY MADE CHIEF JUSTICE

"Marshall was really made Chief Justice by John Adams in payment of a political debt, and because of his logical, masterly argument of a law question while a member of Congress. Thomas Nash *alias* 'Jonathan Robbins,' an Irish mate of the boatswain of the British frigate 'Hermione,' had mutinied and with others killed the principal officers and carried the boat into a Spanish port, and was in consequence surrendered to the British authorities by President Adams, under the Jay Treaty, and was apprehended in Charleston, S. C., in 1799, and his extradition asked by British authorities. Adams referred the matter to Judge Bee, the U. S. Judge at Charleston, and the judge acting as a commissioner and carrying out the suggestion of the President, turned him over to Great Britain, where he was tried by court-martial, convicted and hanged. The affair caused great excitement. Nash had claimed American citizenship. The Republicans (the Jeffersonian party) took the ground that he had the right to a judicial trial, as provided by the Constitution; that the President's action should be condemned, etc. Resolutions were introduced in the House to this effect. It was in opposition to these that Marshall addressed Congress, March 4, 1799. He maintained:

"1st. That the case was within the Treaty; and

"2nd. That the case was for the Executive, and not judicial decision. It was a great speech; one of the best in our political annals, and it is equal to any of his great judicial decisions,—analytical, clear, concise, logical, convincing. After the argument the President's position was sustained by a large majority, and Marshall's great reasoning powers recognized."—*William Draper Lewis*—2 *Gt. Am. Lawyers*, 374-5.

### MARSHALL AND STORY'S PLEDGE

"While Judge Marshall and Judge Story were boarding together in Washington, during their term in the Supreme Court they came to the conclusion that Madeira wine was apt to be more of a habit than a necessity, so concluded not to take it, except when it was raining; then excused on the ground that it would prevent or cure a cold. One day, when Washington was laboring under a long, dry spell, Marshall said:

"'Oh, Story, won't you please go to the window and see if it is raining?'

"Story did so, and returned with: 'No rain in sight—not a cloud.'

"'Umph!' said the Chief Justice, 'that's in Washington. Well, our jurisdiction extends over a vast territory. It surely is raining somewhere in it. Bring out the jug!'"

### WHY A GREAT JUDGE

"If we read Marshall's opinions in the four great cases interpreting the Constitution—*Marbury v. Madison*, *McCulloch v. Maryland*, *Gibbons v. Ogden*, and *Cohen v. Virginia*, we will see that the great issue involved was interpreted according to its evident meaning—the important part of the same decided; while we may have some doubt in regard to the minor matters treated, we will not have as to the correctness of his conclusions on questions of first importance. Thus in *Marbury v. Madison*, we may doubt whether the appointment to a Federal office is complete



until the appointee's commission is delivered to him, but not of the duty of the judiciary to disregard constitutional legislation; in *McCulloch v. Maryland*, we may question the correctness of the assertion that 'the power to tax is the power to destroy,' but not the power of the Federal Government to create a corporation as a means of executing one of its enumerated powers; in *Gibbons v. Ogden*, we may think in spite of Marshall's opinion to the contrary, that the legislation of Congress and of the State of New York were not in conflict, but will not dispute the correctness of the definition of the scope of the Federal power over commerce; while in *Cohen v. Virginia*, as the Court confines itself to the single question of jurisdiction, we will accept Marshall's argument in all its parts as sound. This ability to take a legal question on which a large number of persons have preconceived opinions, the product of their political prejudices, analyze it in its parts in such a way that the conclusion reached is admitted by the great majority of each successive generation of students to be inevitable, is the best test of Marshall's greatness as a lawyer."

—2 *William Draper Lewis*—*'Gt. Am. Lawyers,' Vol. 2, 374-5.*

### PICTURE OF MARSHALL AS LAWYER.

"On a pleasant summer morning, a tall, ungainly man in early middle life, sauntered along a Richmond street. His long legs were encased in knee-breeches, stockings, and shoes of the period; and about his gaunt, bony frame hung a roundabout or short linen jacket. Plainly, he had paid little attention to his attire; bareheaded, his unkempt hair was tied behind in a queue; his hat under his arm, full of cherries which he was eating as he sauntered idly along. He stopped before The Eagle hotel, greeted the landlord, cracked a joke, and passed on. At the inn was an old gentleman from the country, who had come to Richmond where a law-suit to which he was a party was to be tried. He asked who was the best lawyer in Richmond, 'The man who has just passed, John Marshall,' replied the inn-keeper. The country man, diverted by the lawyer's appearance, did not fill the old man's idea of a practitioner before the Courts. He wanted for his \$100—all he had—a lawyer who looked like a lawyer. He went to the Court-Room, to look for himself, and was told by the clerk to retain Marshall, who then ambled into Court. Soon a venerable person, solemn of face, with black coat and powdered wig, entered. At once the planter retained him. The client remained in Court, it appears, to listen to the lawyers in other cases ahead of his. Thus he heard the pompous advocate whom he had chosen; and then in astonishment listened to Marshall. The attorney of impressive appearance turned out to be so inferior to Marshall, that he went to the latter, frankly told him his circumstances, and apologized, explaining that he had \$5 left, and asked Marshall whether he would conduct his case for that amount. With kindly jest about the power of a black coat and a powdered wig, Marshall good-naturedly accepted."

—2 *Beveridge's Life of Marshall, 166-7; 'Southern Literary Messenger,' No. 2, 181-91; See also 8 Jefferson's Works (Ford's ed.), 197-8—as to his 'lax, lounging manners.'*

### NATIONAL AND STATE RIGHTS

"If the legislature of the several states may, at will, annul the judgments of the courts of the U. S., and destroy the rights acquired under these judgments, the Constitution itself becomes a solemn mockery, and the Nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals."

—*Marshall in the United States v. Peters, 5 Cranch, 135.*



## GIBBONS V. OGDEN, AND OTHERS

"Never in Congress or Court had that uprising man (Dan'l Webster) prepared so carefully. Of all his legal arguments, that in the steamboat case is incontestably supreme. And as far as the assistance of associate counsel was concerned, Webster's address, unlike that in the Dartmouth case, was all his own. It is true that every point he made had been repeated many times in the Congressional debates over internal improvements, or before the N. Y. courts in the steamboat litigation; but these facts do not detract from the credit that is rightfully his, for his tremendous arguments in *Gibbons v. Ogden*. On Mar. 2, 1824, Marshall delivered the opinion, which has done more to knit the American people into an invisible nation than any one force in our history, excepting only War.

"In *Marbury v. Madison* he established that fundamental principle of liberty that a permanent written Constitution controls a temporary Congress; in *Fletcher v. Peck*, in *Sturgis v. Crownshield*, and in the Dartmouth case he asserted the sanctity of good faith; in *McCulloch v. Maryland* and *Cohens v. Virginia* he made the government of the American people a living thing; but in *Gibbons v. Ogden* he welded that people into a unit by the force of their mutual interests."

—4 *Beveridge's Marshall*, 425-30.

## GREAT BRITAIN'S ATTITUDE TOWARDS THE UNITED STATES

"Gentlemen, there is today in my country, as in yours, a pride in the United States. We cannot forget that if you won your independence, if you achieved your liberties, if you laid the foundations of your constitution, if you prepared for such a nation as exists today, you were at that time colonists of Great Britain. The men who laid the foundation stones for the United States, in which you today glory, were those who had gone out from amongst us, who had in the country of my birth imbibed for the most part their traditions of liberty and their desire and determination to achieve it; and, therefore, with no misgiving, with nothing but a feeling of pride, we may rejoice in your success and in your progress. We long ago admitted the follies and the wrong-doings of those times, as freely as you could insist upon them yourselves. I am not going to dwell upon that aspect of the case tonight, because I am quite aware that sometimes the ready admission of wrong-doing is rather irritating than soothing. I remember once hearing a learned counsel, who was conducting the trial of a case before a judge of great ability but of not of the best of tempers, put a question of a character such as to shock anyone accustomed to be guided by the rigid rules of evidence. Strictly in confidence, I don't think he had the least idea that it was a wrong question, but the learned judge interposed and said: 'That was an improper question, Mr. So and So.' 'Yes, my Lord, it was very improper.' 'Yes,' said the judge, 'you ought not to have put the question—a most improper question.' 'Yes, Sir, I ought not to have put it, a more improper question never was.' And the more the judge reproached him the more submissive he became, until he drove the judge nearly mad."

—Lord Farrer Herschell of England, '*Great Britain and the United States*,' at N. Y. City, Nov. 15, 1898.

Lord Herschell was President of the Joint High Commission to Arbitrate the dispute between Canada and the U. S. relative to the Bering Sea Seal Fisheries.—*Author*.



## THOS. F. MARSHALL (1801-1864), Kentucky

### DEFENSE OF HAMILTON

“The interpretation and defense of the constitution under which we live, as embodied in the *Federalist*, were mainly the production of his (Hamilton’s) mind, and still form the text-book for American statesmen, lawyers, and judges. The measures recommended and the principles maintained by him in relation to the foreign and domestic policy of the government he had so signally aided to establish—the assumption and funding of the revolutionary debts of the States; the full and faithful payment of the public securities; the administration of the national finances, and the supply of a national currency and commercial medium for the people, combining the solid credit of the metals, with the lightness, facility of transmission, and cheapness of paper, through the agency of a Bank of the U. S.; a strict neutrality, and the encouragement of a navy, with a view to its maintenance and the protection of our commerce; the fostering care of American manufactures; and, above all, the indissoluble union of these States under a common government, having complete, national, and paramount authority over all, touching those things which are common to all—these are among the opinions he has left recorded in his immortal works; and there is abundant evidence that they were formed in the school and ratified by the judgment of that *slaveholder* (Washington) whose sacred dust now reposes within a few miles from this spot, in the soil of his native Virginia, and on the banks of his own once loved Potomac. Against the hated head of this great statesman and illustrious man were hurled the whole thunders of a victorious and triumphant party; nor did they cease till the hand of one, now branded in his country’s history as a traitor, in an evil hour had laid him low. Whatever may have been his errors, it would be hard to convince me that one who had entered the family of George Washington at the age of nineteen—who had served with him for seven years, through all the soul-trying scenes of the Revolution—who enjoyed his entire confidence then, and continued so to enjoy it, that afterward, when the leader of the Revolution became the civil head of the republic he had founded, this same traitor was called by him to preside over that department, the most embarrassed, the most difficult, the most responsible; and his genius was invoked and his judgment trusted to devise the means of establishing credit, creating revenue, and reforming the most debased currency ever employed in the transactions of mankind; and well did the first Secretary of the Treasury vindicate the opinion of his old leader had formed of him. And, sir, when George Washington, after his retirement from civil office, was again, and I believe in the last year of his life, called on by his country to head her armies in a war then expected with France, he stipulated, as the condition of his acceptance, the right to name his officers; and he appointed the same traitor-federalist, Alexander Hamilton, his second in command—I repeat it; it would be most difficult to convince me, with all my confidence in the sagacity, judgment, acute discrimination of character, and untarnished honor of George Washington, that there was treason in the heart of one whom he reared, loved, and trusted throughout his glorious life. If admiration of this man’s genius, sorrow for his faults, and pity and regret for his untimely fate, be federalism—I stand convicted.”—*Thomas F. Marshall, of Ky. (1801).*

From debate in H. of R. on the Resolutions to censure John Quincy Adams for presenting a petition praying for the dissolution of the Union, in 1842. Mr. Marshall was a nephew of C. J. John Marshall, being the son of Dr. Louis Marshall, the youngest brother of John Marshall.



## WEBSTER'S OPINION OF GIBBONS V. OGDEN

"What do you regard as your greatest speech?" asked Harvey of Webster: the latter replied as follows:

"My forensic efforts have been those which have pleased me most. The two arguments that have given me the most satisfaction were the arguments in 'the steamboat case' and the Dartmouth College argument. The steamboat case, you remember, was a question of the constitutionality of the right of New York State to give a monopoly to Fulton and his heirs forever, of the privilege of plying the waters of the Hudson with his steamboats. The value of such a right was not then and could not have been, from the nature of the case, fully understood. But it seemed to me to be against the very essence of State rights, and a virtual dissolution of the union in a commercial sense. If New York had a right to lay tolls upon her rivers for everybody that should pass, then all the other great international rivers and lakes would have the same right, and we could not be one as a commercial people. The people of New York felt that their rights were at stake in the contest; and their great lawyers—and they had many of them—were engaged on that side; the Livingstons and Clintons and others of like caliber. Mr. Wirt and myself were employed against the monopoly. When the case came to be argued before the Supreme Court at Washington, Chief Justice Marshall presiding, Mr. Wirt and myself met for consultation. Mr. Wirt asked me upon what grounds I based my case, upon what clause of the Constitution. He had a right to ask, as he was my senior in years and professional fame. My reply was, that the clause of the Constitution which ceded the general government the right to regulate commerce was that upon which I based my defence. Mr. Wirt's reply to that was, that he did not see, in that line of argument, any ground for our case to rest upon. I said: 'Very well; what is yours?' So he told me. I do not recollect what it was, but it was a totally different clause in which he found the ground of his argument. I said to him: 'Mr. Wirt, I will be frank with you as you have been with me, and say that I do not see the slightest ground to rest our case upon in your view of it.' 'Very well,' replied Mr. Wirt, 'let us each argue it in our own way, and we will find out, which, if either, is right?'

\* \* \* The result of the case was this: the opinion of the Court, as rendered by the Chief Justice, was little else than a recital of my argument. The Chief Justice told me that he had little to do but to repeat that argument, as that covered the whole ground."

—*Reminiscences of Daniel Webster,* by Peter Harvey, 140.

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A NON-SUIT

It is said in the *March on Arbitrements*, 215, that a non-suit "is but like the blowing-out of a candle, which a man, at his own pleasure, lights again."

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A MAN'S HOUSE IS HIS CASTLE

"My client," said an Irish advocate, pleading before Lord Norbury in an action for trespass, "is a poor man. He lives in a hovel, and his miserable dwelling is in a forlorn and dilapidated state; but, thank God! the laborer's cottage, however ruinous its plight, is his sanctuary and his castle. Yes, the winds may enter it, and the rain may enter it; but the King cannot enter it." "What! not the reigning king?" inquired his lordship.



## LUTHER MARTIN (1748-1826), Maryland

### ARGUMENT FOR SUBPOENA DUCES TECUM FOR PRESIDENT THOS. JEFFERSON

"All that we want are the copies of some papers and the original of another. This is a peculiar case, sir. The President has undertaken to prejudice my client by declaring that 'of his guilt there can be no doubt.' He has assumed the knowledge of the Supreme Being himself, and pretended to search the heart of my highly respected friend. He has proclaimed him a traitor in the face of that country which has rewarded him. He has let slip the dogs of war, the hell-hounds of persecution, to hunt down my friend. And would this President of the United States, who has raised all this absurd clamor, pretend to keep back the papers which are wanted for this trial, where life itself is at stake? It is a sacred principle, that in all such cases, the accused has the right to all evidence which is necessary for his defense."

(This argument was made to Chief Justice Marshall, sitting in Richmond, Va., in the trial of Aaron Burr, the Vice-President of the U. S., for treason, and as a result of the argument, Marshall held that there were no prerogatives which absolved him (Jefferson) from the obligations of citizenship and decided that the subpoena might issue. Jefferson, lashed with rage by Martin's criticism and Marshall's decision, wrote to his prosecutor, Geo. Hay: "The leading feature of our Constitution is the Independence of the Legislative, Executive and Judiciary of each other; and none are more jealous of this than the Judiciary. But would the Executive be independent of the Judiciary if he were subject to the *commands* of the latter, and to imprisonment for disobedience; if the smaller courts could bandy him from pillar to post, keep him constantly trudging from north to south and east to west, and withdraw him entirely from his duties?" Jefferson disobeyed the subpoena.—*Author.*

### PERORATION IN BURR TRIAL

"When the sun mildly shines upon us, when the gentle zephyrs play, we can easily proceed forward in the straight path of duty; but when black clouds enshroud the sky with darkness, when the tempest rages, the winds howl, and the waves break over us—when the thunders awfully roar over our heads and the lightnings of heaven are called into action—it is *then* that all the energies of the human soul are called into action, it is *then* that the truly brave man stands firm at his post. It is *then* that, by an unshaken performance of his duty, man approaches the nearest possible to the Divinity. Nor is there any object in the creation on which the Supreme Being can look down with more delight and approbation than on a human being in such a situation and thus acting. May that God who now looks upon us, who has in His infinite wisdom called you into existence and placed you in that seat to dispense justice to your fellow-citizens to preserve and protect innocence against persecution—may that God so illuminate your understandings that you may *know* what is right; and may serve your souls with firmness and fortitude to act according to that knowledge."

—*In trial of Aaron Burr, for treason, in behalf of Burr.*

Taney, when 73, placed Martin at the head of the profession in Maryland, saying: "With all his defects, he was a profound lawyer. He never missed the strong points of his case; and altho' much might generally



have been better omitted, everybody who listened to him would agree that nothing could be added. \* \* \* He had an iron memory, and forgot nothing he read; and he had read a great deal on every branch of the law."

#### REVERDY JOHNSON ON HIS INTEMPERANCE

"When a young lawyer, Johnson was associated with Martin in a case. They drove from Baltimore to Annapolis to try the cause. Stopping over night at the 'Half-way House,' Martin got very tipsy as usual. They put up at the hotel, and Johnson had been sleeping some hours when awakened by Martin's entering the room. Though Martin was tipsy he lighted a candle, threw himself on the bed, took a volume from his pocket and began to read. Much surprised, Johnson inquired as to what so interested him. 'Young man,' replied Martin, 'I have of late always made it a rule to read a few pages from the book of Common Prayer before going to sleep.'"—*2 Gt. Am. Lawyers,* 40.

#### TANEY'S EXPERIENCE WITH MARTIN

"On one occasion Martin was associated with Taney, afterwards Chief Justice of the U. S., in an important ejectment case at Hagerstown, Maryland. They drove from Frederick, twenty-six miles away, in five relays. At every stop Martin took whisky, when he could get it, ale when he could not, and buttermilk when he could get neither. Taney, then a young man, called at Martin's room at 11 o'clock at night, to talk the case over, found him with his hat, one boot and all his clothes on, lying across the bed asleep from his various potations. The next morning found his hotel-door locked, and Taney was obliged to go to the Court-House alone. He knew very little about the case, told the Court so, and tried to get a continuance, but the Judge insisted the case must be tried, and, as luck would have it, just as the case was called, in walked Mr. Martin. Says Taney, 'In none of his forensic efforts did he exceed his skill in the management of this case; and from the trial I, comparatively a young man, got a new insight into ejectment causes'."

—*Roger B. Taney's Memoirs, by Tyler, 122-3.*

#### FOND OF MUSIC, SERENADE

"Martin was very fond of music, but could not distinguish one tune from another. After his defense of Aaron Burr for treason he was very unpopular in Baltimore. A crowd surrounded his house with a band of music playing the 'Rogue's March.' The old gentleman took it as a compliment, walked to the front and thanked them politely for their music. Not expecting such a reception, the mob stared and moved on, and his family, much terrified, gave him a hint to slip away from the door."

—*Bigelow's 'Bench and Bar,' 2 9.*

#### ASHLEY M. GOULD'S TRIBUTE

"Martin was no orator, as were Henry, Wirt and Pinkney; he was not capable of the constructive statecraft of Hamilton and Madison; he did not possess the power of clear analysis and the judicial temperament of Marshall; but as a lawyer, and a lawyer alone, he was an acknowledged leader of the American bar for two generations. For thirty years he was attorney-general of his State; at forty-three years of age, he was the most influential representative in the Constitutional Convention of 1787; he was leading counsel in two great cases of our early history, the impeachment of Samuel Chase, and the trial of Aaron Burr for treason, and on the conclusion he had the honor of being burned in effigy, in the city of Baltimore, by the side of John Marshall."

—*'Great American Lawyers,' vol. 2, 3-4.*



### BLANNERHASSET'S DESCRIPTION

"As we were chatting, after dinner, in staggered the whole rear-guard of Burr's forensic army, I mean, the celebrated Luther Martin, who yesterday concluded his fourteen-hour speech. His visit was to Major Smith, saying there was no need of an introduction. I was too much interested in the little I had seen, and the great things I had heard, of this man's powers and passions not to improve the present opportunity to survey him in every light the length of his visit would permit. I accordingly recommended our brandy as superior, placing a pint tumbler before him. No ceremonies retarded the libation; no inquiries solicited him upon any subject, till apprehensions of his withdrawing suggested some topic to quiet him on his seat. Were I now to mention only the subjects of law, politics, news, etc., on which he descanted, I should not be believed, when I said his visit did not exceed thirty-five minutes. Imagine a man capable in that space of time to deliver some account of the entire week's proceedings in the trial, with extracts from memory of several speeches on both sides, including long ones from his own; to recite half columns verbatim of a series of papers, of which he said he is the author, to caricature Jefferson; to give a history of his acquaintance with Burr; expatiate on his virtues and sufferings, maintain his credit, embellish his fame, and intersperse the whole with sententious reprobations and praises of several other characters; some estimate, with preparations, may be formed of this man's powers, which are yet shackled by a preternatural secretion or excretion of saliva which embarrasses his delivery. In this, his manner is rude, and his language ungrammatical, which is cruelly aggravated upon his hearers by the verbosity and repetition of his style. With the warmest passions, that hurry him like a torrent over those characters or topics that lie most in the way of their course, he has, by practice, acquired the faculty of curbing his feelings, which he never suffers to charge the enemy till broken by the superior number of his arguments and authorities, by which he always outflanks him when he lets loose the reserve upon the center, with redoubled impetuosity. Yet, fancy has been denied to his mind or grace to his person or habits. These are gross and incapable of restraint, even upon the most solemn public occasions. This is, at all times, awkward and disgusting. Hence, his invectives are rather coarse than pointed; his eulogies more fulsome than pathetic. In short, every trait of portrait may be given in one word, he is '*the Thersites of the law.*'"—2 *Parton's Burr*—*Blennerhasset's Journal*), 152-3.

### THANKED PARENTS FOR HIS EDUCATION

"My education is a patrimony, for which my heart beats toward them a more grateful remembrance than had they bestowed upon me the gold of Peru or the gems of Colconda."

### LAWYERS IN MARYLAND PAID \$5 EACH

In 1810 he was stricken with paralysis, and every lawyer in the State was compelled by legislative act to pay a yearly license fee of \$5.00 for his support. He died in 1826.

### LORD ELDON ON LENDING BOOKS

Lord Eldon lent two large volumes of precedents to a friend, and could not recollect to whom. In allusion to such borrowers, he observed, that, "though backward in *accounting*, they seemed to be practiced in *book-keeping*."



## JEREMIAH MASON (1768-1848), New Hampshire

"He (Joseph Dennie) was the most aerial, refined, and highly sublimated spirit it has ever been my hap to meet with."—*Jeremiah Mason, in speaking of a young lawyer of Walpole, N. H.*

This is probably plagiarized from Lawrence Stern's description of Parson Yorick in "Tristram Shandy," where the writer says: "He (the parson) was on the contrary as mercurial and sublimated a composition, as heteroclite (an irregularly declined noun) a creature in all his declensions; with as much life and whim, and *gaiete de coeur* (gaiety of heart) about him, as the kindest climate could have engendered and put together"—*The Author*.

### RELIGION ESSENTIAL TO FEMALE CHARACTER

"A man without religion is never to be much relied on. But an impious woman is a dangerous monster, always to be shunned and avoided. Infidelity and irreligion are absolutely inconsistent with the delicacy of the female character."—*From letter to his daughter.*

### MARSHALL AND WEBSTER'S ESTIMATE OF MASON

Chief Justice Marshall considered Mr. Mason the greatest master of the common law in the country, and this was the unanimous opinion among the lawyers. Webster being asked who was the greatest lawyer in the U. S., replied: "I should say, of course, John Marshall; but if you should take me by the throat, and run me back into a corner and demand 'Now, Webster, upon honor, who is the greatest lawyer?' I should have to say 'Jeremiah Mason.'"

### PARENTAL AFFECTION

"Parental affection is the most uniform as well as the strongest of any that our nature is capable of. I have never known any grief to equal that of parents from the loss of children. The death of an interesting child in the early blossom of life blasts all flattering hopes, and implants a woe that seems remediless. The chief consolation must come from hopes which religion furnishes. Philosophy and religion, with the aid of time, may assuage the suffering. In truth, without these hopes, life, checkered and clouded as it is by the constant occurrences of such interesting events, would not be worth possessing. And, this I think constitutes one of the most solid foundations of those hopes. It seems inconsistent with the wisdom and benevolence of God, that beings so intelligent as our race should have been created for the sole end of what we do and suffer in this world."—*Jeremiah Mason, letter to Judge Story, on the death of the latter's daughter, May 23, 1831.*

### MARSHALL SECOND TO WASHINGTON

"If John Marshall had not been Chief Justice of the United States, the Union would have fallen to pieces before the general government had got well under way. Marshall has controlled the Virginia politicians by the irresistible power of his logic. He carried so many well informed and well intentioned men with him that the mischievous school of Jefferson politicians could not control Virginia against Marshall. Jefferson was a man of many virtues, but he was a philosopher, not a statesman. He and Madison did not quite agree. Madison's mind felt the force of Marshall's reasoning, and never quite adopted the Virginia State's rights theories. John Marshall has saved the Union, if it is saved."

—*Jeremiah Mason, said to W. H. Y. Hackett, a Portsmouth, N. H., lawyer, soon after Calhoun's nullification doctrines began to attract attention.*



## AMBITION

"I believe I never rated very highly the pursuits of ambition. Among those who have run this race most successfully I see few happy or satisfied. Our country affords but slight inducements to engage in it."

—*Jeremiah Mason, letter to his wife, 1814.*

## WASHINGTON

"I have never doubted that Washington was by far the best and greatest man that I have ever seen; as a public man he approached as near perfection as it is possible for human nature to do. With me it constitutes one of the strongest illustrations of the innate depravity of our nature that a large portion of his countrymen, who, without his aid, would probably never have been an independent country, reviled him when living, and after death, when the unanimous voice of the whole civilized world compelled them to acknowledge his virtues and his wisdom, have churlishly and foolishly refused to follow his example or his precepts."—*Jeremiah Mason's Memoirs, p. 36.*

## FRIENDSHIP OF AGED INFREQUENT

"Warm friendships are not often contracted among men who have arrived at or passed the middle age of life."

—*Jeremiah Mason, letter to wife, 1816.*

## A SLOW JUDGE

Being asked what he thought of a judicial appointment, he replied: "He'll make a slow judge." "Do you mean, Mr. Mason, that his mental processes are slow?" "No, it's not that; but he'll have twice as much to do as most other judges. He'll have first to decide what's right, and then to decide whether he'll do it."

## OBJECTED TO JUDGE'S QUESTION

A distinguished judge before whom Mason was trying a case put to a witness a question of very doubtful competency. Mr. Mason bluntly exclaimed: "If your Honor puts that question for us, we don't want it; if you put it for the other side, I object that it isn't evidence."

## HIS REBUKE OF AN INSURANCE PRESIDENT

Just as Mason was about to leave his office one morning, a pompous president of an insurance company called to consult him. Said Mason: "Mr. B., I must be in court in twenty minutes. Please state the facts in your case as tersely as you can, and I will give you my best attention." But Mr. B. could not help stating his own views of the law as he proceeded, and it was pretty obvious that he would not be able to finish his statement within the time allowed. The old lawyer was silent and indignant, during the twenty minutes, then rose, looked at his watch and said, "Good morning, Mr. B., were you always such a d—d fool?"

## SUBPOENA THE ANGEL

Mason was once engaged to defend a clergyman accused of a capital crime (the E. K. Avery case), and was repeatedly bothered by the attempts of the brethren to make him substitute theological for legal evidence. As he was making out his brief, one of these sympathizers



with the prisoner rushed into the room with the remark that Brother Avery was certainly innocent, for an angel from heaven had appeared to him the night before, and had given him direct assurance of the fact. "That is very important evidence, indeed," was Mr. Mason's gruff reply; "but can you subpoena that angel?"

### SURPRISED THE WITNESS

Mr. Mason possessed to a marked degree the instinct for the weak point. He was once cross-examining a witness who had previously testified to having heard Mr. Mason's client make a certain statement, and it was upon the establishment of that statement that the adversary's case was based. Mr. Mason led the witness around to this statement, and again it was repeated verbatim. Then, without warning, he walked to the stand, and pointing straight at the witness, said, in his high impassioned voice: "Let's see that paper you have in your waistcoat pocket."

Taken completely by surprise, the witness mechanically took the paper from the pocket indicated and handed it to Mr. Mason. The lawyer slowly read the exact words of the witness in regard to the statement, and called attention to the fact that they were in the hand writing of the lawyer on the other side. "Mr. Mason, how under the sun did you know that paper was there?" asked a brother lawyer. "Well," replied Mr. Mason, "I thought he gave that part of his testimony more as if he'd heard it, and I noticed every time he repeated it he put his hand to his waistcoat pocket, and then let it fall again when he got through."

### HUGH McCULLOCH'S OPINION OF MASON

"In 1832 I went to hear Mr. Mason, before a House committee of the legislature of Massachusetts, in favor of a bill for the incorporation of a company to construct a railroad from Boston to Salem. Mr. Mason was then in the meridian of life, and without a peer in his profession. He was employed to appear before the committee. I went to hear him. He had not spoken five minutes before my attention was absorbed, and although he spoke for nearly two hours, I was sorry when he closed. His argument was conclusive. The impression which it made upon my mind has never been lost. It was the first time I had heard a purely logical speech. It was not eloquence, but concise, clear, cogent argument. It was profound, yet so clear that anybody could follow and understand it. The committee reported favorably upon the bill, and it was soon after passed by both branches of the legislature. Mr. Mason was full six feet and a half in height, and upwards of three hundred pounds in weight. His head, which while speaking, was always slightly inclined towards the right shoulder, was well formed, and, although very large, seemed to be small in comparison with his tall and massive body. His dress was careless, if not slovenly, and there was a wide show of linen between his trousers and his waistcoat. He spoke deliberately. His enunciation and his command of language were perfect. He was not an orator, and was doubtless inferior to many of the lawyers of the day as an advocate before a jury; but in legal knowledge, and in clear and cogent logic, he had no equal, not even in Mr. Webster."

—*Hugh McCulloch's 'Men and Measures of Half a Century,' 34.*

### WEBSTER'S OPINION OF MASON

"I regard Jeremiah Mason as eminently superior to any other lawyer whom I ever met. I should rather, with my own experience (and I have had some pretty tough experiences with him), meet them all combined in a case than to meet him alone and single-handed. He was the keenest lawyer that I ever met or read about. If a man had Jeremiah



Mason and he did not get his case, no human ingenuity or learning could get it. He drew from a very deep fountain. Yes, I should think he did, from his great height."

At another time being asked who was the greatest lawyer in the United States, he replied:

"I should say, of course, John Marshall; but if you should take me by the throat and run me back into the corner, and demand, 'Now, Webster, upon honor, who is the greatest lawyer?' I should have to say, 'Jeremiah Mason.'"

Webster further said he owed his success to the close attention he was compelled to pay for nine successive years from day to day to Mason's efforts at the same bar; and that he was indebted to Mason for the change in his style in speaking and writing.

### MASON AND WEBSTER CONTRASTED

"Mr. Mason was fourteen years older than his friend (Webster), and on this account, as well as from the former's commanding position at the bar, the younger man looked up with deference to the elder. And from the intellectual characteristics of the two men, Mr. Mason was fitted to exercise a valuable influence over his younger friend. Mr. Webster had more various power than Mr. Mason, but the latter was his equal, at least, in logical force, and his superior in legal learning. Mr. Mason's whole mind and time were given to the law; not so Mr. Webster's. The difference between them may be thus stated: Mr. Mason was a great lawyer, but Mr. Webster was a great man practicing the law. Nor had the latter Mr. Mason's love of labor and patience in legal research; indeed, Mr. Webster's natural temperament was rather inclined to ease and averse to exertion. It required a strong force to rouse his great powers into full activity."

—Clark's *'Reproduction of the Memoir of Jeremiah Mason,'* 42.

### LOVE OF HOME

"I am here constantly surrounded by people for whom I do not care a biscuit; at home I am in the midst of all those I hold dear. Here (Washington) nothing concerns or interests me; there, everything."

—*Letter to his wife, from Washington, when Senator, Feb. 11, 1813. For this reason he resigned after serving four years. Memoirs, by Clark, 60.*

### RUFUS KING'S ELOQUENCE

"Rufus King is the most eloquent man I ever heard."

—*Letter to Wife, Wash., Dec. 11, 1814.*

### JOHN RANDOLPH

"I have seen a good deal of the celebrated John Randolph, who is in all respects the most extraordinary man I ever knew. He differs essentially both in person and mind from his species. I do not think so highly of his talents as I did before I saw him, but he is more eccentric than he is reputed. I do not think he will long sustain his reputation for talents. \* \* \* All the world here are talking about Randolph, who has been talking in the House of Representatives all the time of the session for three full days in succession, about everybody and everything. He observes little or no connection in his discourses, and produces no effect except entirely to destroy his own reputation and influence. I have not heard him during any of the very long speeches. But those who did are almost universally disgusted. His standing and influence are lost."—*Letter to his wife, Wash., D. C., Jan. 24, 1816.*



### CHOSE PORTSMOUTH OVER BOSTON—WHY?

Mr. Mason chose Portsmouth over Boston, as a place of residence, in 1897, because he believed its future progress and prosperity were more assured.—*Memoirs*, 165.

### ARGUMENT IN THE DARTMOUTH CASE

“Mr. Webster’s celebrated argument has more variety of illustration and more rhetorical finish than that of Mr. Mason before the Supreme Court of New Hampshire, but all the legal and constitutional points taken by the former were anticipated by Mr. Mason, and stated with no less clearness and force.” (And Mr. Webster stated this was the case.)

—*Memoirs*, 172. *The statement of Geo. S. Hillard.*

### PREJUDICE

“It is a well known characteristic of prejudice that the individual under its influence is often wholly unconscious of it. It bears on him like the elements. He does not feel the pressure even while borne away with it. The subtle power is operating while he is ignorant of its force over his judgment. The mind, like the body, seems to be exposed to epidemic diseases, against which no care or caution can defend. Prejudice has always been one of the chief sources of the errors which have prevailed in the world. It extends sometimes over whole communities, and embraces all subjects that come under the operation of the human mind, whether physical, moral, religious, or political. The existence of prejudice often constitutes the most insuperable obstacle to the investigation of truth. An opinion resting in mere prejudice, and adopted without knowledge or investigation, often becomes so firmly fixed and settled as to resist the clearest demonstration of its falsity.

“Lord Bacon, who did so much to enlighten the world at the end of the dark ages, terms these prejudices ‘the idols of the mind.’ They were worshipped. The idol ever held mankind bound down in stronger chains, or more cruel bondage. They were unable to relieve themselves, or receive relief when offered. Our country has had its share of this evil. The bigotry and intolerance of former times in matters of religion may be justly attributed to this cause. We of this age can readily discover the errors caused by the prejudices of our ancestors. Will not the succeeding age as distinctly perceive the errors of this, arising from the same source? What but prejudice is the cause of the political divisions and feuds that distract the country?

“When the counsel who opened for the defense slightly alluded to the prejudicial murders of former times, in a neighboring State, on accusations of witchcraft, it excited a smile of the opposing counsel. They, probably, thought that nothing in this enlightened age could come into competition with the absurdity of that popular prejudice. Let it be remembered that the actors in that tragedy were men distinguished for their piety, learning and intelligence. They were borne away by the popular delusion. Some of them lived to discover and bitterly to repent their mad error. At the annual returns of the sad period they kept their fasts with great severity of observance. But it was too late for relief in this world; their victims had been sacrificed.”

—*To the Jury in defense of Rev. E. K. Avery, for the murder of Sarah M. Cornell, Dec. 21, 1832. Tried at Newport, R. I. The case lasted 27½ days. The defendant was cleared. Mr. Mason was then 65 years of age.*



## LORD HALE'S MAXIM

"Lord Hale lays down the maxim, 'that it is better one hundred of the guilty should escape, than one who is innocent should suffer.' Suppose a case where there were 100 men on trial, 99 of whom were guilty and one was innocent; and not knowing which was the innocent one, you must give a verdict of guilty against the whole 100, or acquit the whole. Could you sacrifice the one who was innocent, in order to insure the conviction of the guilty? You could not do it, gentlemen. No man with human feelings could endure it. Apply that case to the evidence which you are required to find the defendant guilty upon circumstantial evidence. You have no right to calculate chances. There must be a moral certainty. You cannot condemn while a legal doubt exists; and so long as there is a remote probability, no matter how far off, that is, a legal doubt, and the defendant is entitled to the benefit of it."

—*In defense of Rev. E. K. Avery, to the jury.*

## THE FEMALE CHARACTER

"That there is a charm, a refinement, a delicacy in the female sex superior to man, no civilized community has ever doubted. It is female character, when pure and unstained, which contributes to the embellishment and refinement of society in the highest degree, but in the same proportion as woman, when chaste and pure excels the other sex, by just so much when profligate, does she sink below them; and if you were to seek for some of the vilest monsters in wickedness and depravity, you would find them in the female form."

—*To Jury, in defense of Rev. E. K. Avery.*

## LAW PRESUMES DEFENDANT TO BE INNOCENT

"The main points for you to consider are whether the crime was committed at all, and if so, whether the defendant had motive, opportunity and time to commit the crime. If these points are proved against him, the law still interposes her shield to protect him until there is satisfactory proof of his guilt. This is the great foundation of all our security. Nothing but legal proof, given here at the Bar, shall reach the defendant. Conviction shall not follow mere probability. Legal proof, judicial certainty, are one thing—common belief, ordinary suspicion, are another thing; and it is very important that these be not confounded. The law presumes the defendant to be innocent till he shall be, by lawful evidence, proved to be guilty. The jurors are his sworn protectors against all other dangers. A juror may have a strong belief that a fact exists, but there is not proof of it. All that a jury say by their verdict is that there is not legal proof. They may be satisfied that there is strong suspicion, strong probability, but it does not amount to legal proof. Let the popular humor be what it may, it is not legal proof, and we know not where it will carry us. It is your duty to stand by the legal proof. This duty is imposed on you by the common principles of humanity, by your oaths, and by the laws of the land; and this duty I have no doubt you will perform. I have not troubled my mind to inquire how the popular humor came to be as it is. If the popular breeze blows in one direction now, it may shift to another, for it is mere wind. It is raised for no cause—it may die for no cause."

—*From argument to jury by Mason in defense of Rev. E. K. Avery.*



## STANLEY MATTHEWS (1824-1889), Ohio

### SOCIAL ORDER

"This social order, from the nature of the case, in the history of the race, obeys the law of evolution and development. The various forms which at any given period we find co-existing in the world, as there are now, and always have been, many are but the stages of this development. Everywhere and at all times we see the energies of man displayed and exerted in efforts to conquer the world, without and within, to subdue the material universe in order to support and improve his physical and to unfold and develop his spiritual life. And, if too often history has to record the fall of nations and the lapse of races and peoples into barbarism, and even to lament their extinction, nevertheless, the law of progress, in all that we know and all civilization, on the whole asserts itself, even by means of adverse experiences; for the education of the world has come from the knowledge of both good and evil. The hope of this advancement and progressive improvement in the conditions of our earthly life, and increase in the elements of individual wellbeing, is what sweetens the bitterness of living, makes light its burdens, and turns sacrifice into delight. Without it, it is not perhaps too much to say that life would scarcely be worth living; and that society itself becoming stagnant, would also become corrupt, and of corruption die. At least, out of this hope is begotten all the grace and loveliness of life, all art and literature, painting, poetry, sculpture, architecture and music, everything that cultivates and embellishes our earthly habitation. It were rash to predict whether perfect social order would ever be realized by mankind on the earth. But as we are taught to pray for it, we ought not to cease to expect it. We shall, at least, know it when it comes. It will be the kingdom of God upon earth, in which His will shall be done, even as it is done in Heaven. In it there will be a place for every man in which to do the work for which he is best fitted, wherein he will be able to perfect his individual being by the most complete and efficient exertion of every faculty and quality that constitute his characteristics as a man, and whereby he will have the opportunity of accomplishing the greatest good both for others and himself; when every right will be the most richly enjoyed, when every duty will be the most faithfully performed; where the perfect law of justice will be accomplished in every human relation, and cover with its invincible shield the weakest from every conceivable wrong."

—Stanley Matthews, *Address before State Bar Ass'n. at Albany, N. Y., Sept. 20, 1881.*

Mr. Matthews was born in Ohio, 1824, and died 1889, journalist, lawyer, judge, soldier, politician, legislator, and jurist. Justice of U. S. Supreme Court (1878-1889). Of his argument before the Electoral Commission, Senator Edmunds said: "Almost first among the foremost of the strictly legal and Constitutional arguments that influenced that tribunal."

### MORAL CONVICTIONS

"It would cost me a very painful effort to appear today in any case, it has cost me a very difficult and painful mental effort to appear in this. It is easy to swim with the tide, to go with the current, to follow in the wake of the multitude. To do things that are popular is not hard, but to stand by a man's moral convictions, in opposition not to enemies but to friends, tries a man. If your Honors please, it tries me. Except



the loss of dear children, this is the most painful experience of my life, to be told that I am an enemy of religion, that I am an opponent of the Bible, that I have lost in this community my Christian character, and that my children and grandchildren will reproach my memory for this day's work. For all that, and more, has not been whispered merely through the crowds, but has been told me to my face. If your Honors please, I would be silent today if I dared, but I have no choice."

—*Stanley Matthews, opening words in case of Cincinnati School Board's prohibiting the reading of the Bible in the schools of that City, on behalf of the Board.*—7 'Gt. Am. Lawyers' 412.

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## ENERGY AND DETERMINATION

"The longer I live, the more I am certain that the great difference between men, between the feeble and the powerful, the great and the insignificant, is *energy—invincible determination*—a purpose once fixed and then death or victory! That quality will do anything that can be done in this world; and no talents, no circumstances, no opportunities, will make a two legged creature a man without it."

—*Fowell Buxton, 'Smiles Self-Help,' 293*

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## MULES GOING SOUTH TO TEACH

"There," said Emund Randolph, of Virginia, to Uriah Tracy, Senator from Connecticut, remembering that mules were extensively bred in the latter State, "go some of your constituents." (The asses were going from Washington south over the Long Bridge into Virginia). "Yes," replied Tracy, "they are going south to be school-masters in Virginia."

—2 'Great American Lawyers,' 465, Art. James Gould.

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## JOHN LORD SOMERS

"Probably no man ever commenced practice as an advocate in England with such high and varied qualifications. He was consummately skilled as a lawyer—from the practice of commencing an action, which he had learned as a lad in his father's office, to the most abstruse doctrines of real property, which he had imbibed from Winnington, and the most enlarged views of general jurisprudence, with which he had become familiar from his civil law studies in Oxford. He was moreover deeply versed in all constitutional learning, and besides being a fine classical scholar, he was familiarly acquainted with the languages and the literature of all the polished nations of Europe. Above all, he had steady habits of application, and he could not only make the necessary active exertion, but undergo the necessary drudgery and submit to the necessary sacrifices to ensure success at the English bar."

—4 *Campbell's 'Lives of the Chancellors,' 84.*

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TYLER: "John Tyler's administration may be included in a parenthesis and left out in reading our history without the least break in the sense."

—*Thos. F. Marshall.*



## R. T. MERRICK (1826-1885), Maryland

### LOYALTY

"Gentlemen of the jury, the district attorney has invoked your loyalty. Loyalty is a word that does not properly belong to the lexicon of republics, it means the faithfulness of the citizen to the supreme power of the republic. What is the supreme power of the American Republic? The Constitution of the United States, and the laws in pursuance of that Constitution. The loyalty of the Austrian is due to the successors of the Caesars; the loyalty of the Englishman is due to the Queen; the loyalty of the Frenchman is due to Napoleon; but the loyalty of the American citizen is due to no mortal man, but due to the spirit of human liberty, incarnate in the Constitution of the United States. Be loyal to that. Be loyal to the law. Above all things, be loyal to yourselves, and do your duty. 'A feeling of duty performed,' as has been said by a great man, will follow you through the world; but a feeling of duty unperformed will pursue you with the lash of affliction wherever you may go.' All evils that are physical can be avoided; but evil that comes from the conscience, when it arraigns us day by day, cannot be fled from. 'You may take up the wings of the morning, and flee to the uttermost parts of the earth;' but there is neither rock nor corner in which you can hide yourself from it. Go forth then, gentlemen, from your jury box with a conscience free and unembarrassed; a conscience that will say to you in all time to come: 'You have done your duty.' I invoke for the prisoner not your mercy, but your most deliberate judgment. \* \* \* If he is guilty, convict him; if he is innocent, acquit him. May the eternal God so guide your judgments and enlighten your convictions that the remembrance of this day and the day of your verdict may hereafter and forever be a sweet and pleasant recollection."

—*R. T. Merrick in the Trial of John H. Surratt for the Murder of Abraham Lincoln. For Defense.*

### SOME ACCOUNT OF MERRICK

Richard Thomas Merrick was born in Charles Co., Md., Jan. 25, 1826, and died in Washington, D. C., June 23, 1885. Practiced in Chicago, Ill., till 1864, when he moved to Washington, where for twenty years he stood high in his profession. He was engaged in the defense of Pres. Johnson, in his impeachment in 1868; and in 1876-7 was in the Star-Route cases. He was a brilliant debater and public speaker. During the campaign of 1884 he took an active part in the Democratic canvass. He was a lecturer on Constitutional Law in the Georgetown University.

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### LORD LYNDHURST'S GOOD NATURE

When Cleave the newsvender was tried in the Court of Exchequer on a government information, he conducted his own case, and was treated with much indulgence by Lord Lyndhurst the judge. Cleave began his defence by observing that he was afraid he should before he sat down, give some rather awkward illustrations of the truth of the adage that "he who acts as his own counsel has a fool for his client." "Ah, Mr. Cleave," said his lordship with great pleasantry, "ah, Mr. Cleave, don't you mind that adage: it was framed by the *lawyers*."



## GEORGE P. METCALF (1844-1887), Ohio

GEO. P. METCALF ON LAWYERS: "Of all the men on earth who cannot afford to be dishonest, for the sake of humanity, are lawyers, as in their hands rest the destinies of nations."

### HIS RIDICULE OF A TECHNICAL YOUNG LAWYER

"If you and I (speaking to the author of this work) had the critical, discriminating mind of our young lawyer friend here, we'd make great lawyers. We would be satisfied, for instance, with the story of Achilles' vulnerable heel. Not so, our young friend. For when told that the mother held the babe Achilles by the heel-cord, when she dipped him in the river Stix, and therefore did not submerge that part of his anatomy, so as to make it invulnerable, as the dipping had the rest of his person to the enemies' arrows. Why, we would be satisfied: not so our mutual friend here. He would want to know which foot it was, the right or the left, and he would spend weeks looking that up. Now, you see he has an investigating mind, which you and I have not. These are the kind of men that make *great lawyers!*"

### THE WORD "UNABRIDGED" NOT IN THE "UNABRIDGED DICTIONARY"

"Metcalf," said a student of the law in his office, "do you know the word 'unabridged' is not in Webster's Unabridged Dictionary, and therefore is not defined?"

"Oh, yes it is, Burns," who, by the way, was older than Metcalf, "let us understand ourselves, now. I'll bet you the lemonade for the crowd in the office that it is; let us write down just what we are betting upon, so there will be no quibbling." Burns accordingly wrote down the proposition. "Now," said Metcalf, "let us understand ourselves. What do you mean by 'unabridged'?" "Why, anything that is complete, something that has not been shortened," replied Burns. "Well, that is what I understand it to mean. Now, get your dictionary. It was gotten, searched carefully, and the word not found where it should be. "There," said Burns, "set up the lemonade." "But hold on a minute. You haven't got Webster's *Unabridged Dictionary*, according to your own definition. It is abridged just that *one word* at least, if it is not in the book; as you say, anything that is unabridged is something that is complete—not shortened, something that has not been shortened; the book you have has been shortened *that word*, therefore, it is not an 'unabridged' dictionary. Go and get an 'unabridged dictionary,' and it will be there, because this one is incomplete, shortened, at least, as to that word."

Burns, accordingly treated the five or six then in the office.

### REPLY TO JOHN McSWEENEY

"It is unfortunate, gentlemen of the jury, that Lorain County has not an abler prosecuting attorney than my humble self; but it could not get a better one for the \$900.00 yearly salary I receive. I am just one of you. I was brought up on the farm, milked the cows, plowed the fields, mowed the grass with a scythe, cradled wheat, chopped wood, went barefooted throughout the summer, went to district school, a little while at the preparatory department of Oberlin College, studied law, was elected to this office, as hardly anyone else would take it, and here I



am, pitted against the famous lawyer, John McSweeney, one of the most famous criminal lawyers in the U. S., who gets \$500 a day—in two days more than I get for a year's work. Why, gentlemen, when I heard McSweeney was attorney for the prisoner at the bar my first thought was to nolle the indictment (dismiss the case), as I knew I was no match for him. I wanted to get under the bed, as I dreaded to meet such a lawyer in mental combat; but, gentlemen, that would have been dishonorable and cowardly. I have taken an oath to discharge the duties of this office to the best of my ability; and so have you gentlemen. We all have a duty to perform. I am no equal to McSweeney, nor is Judge Hale, here on the bench, nor are you; but we must protect our characters, the chastity of our homes, protect our mothers, our wives, and our sisters, in the dead hours of night, when resting from the trials of the day, in sweet sleep. You are going to do your duty; you are not going to be carried away with flights of oratory, you are going to think of your home, think of the oath you have taken, your duty, as a man, to the community in which we all live, and which we must all guard. I am not afraid of the result in this case, as you are all honest, common sense men. Use your honesty and common sense in deciding this case, and I shall be content."

The above is an excerpt from Metcalf's speech in a rape case at Elyria, O. Two young men were on trial for raping an old German woman, 57 years old. They were both convicted. McSweeney told Judge Hale, the trial judge, that he could not clear a prisoner in Lorain Co. while Metcalf was prosecutor. Judge Hale, the ablest of his time at the Lorain County Bar, and later considered the ablest in Cleveland, where he wound up his career, said several times that he regarded Metcalf the ablest jury lawyer, counting results, with whom he had ever come in contact. He would take the fewest facts and build up the strongest argument that it was his good fortune to listen to.

#### A. R. WEBBER'S TRIBUTE

"Mr. Metcalf was three years in the War of 1861-5, was engaged in many battles, among them Gettysburg; contracted rheumatism and chronic diarrhoea in that service, from the effects of which he began to waste away at the age of thirty. Between thirty and forty-four, the age of his death, his infirmities overtook him to such an extent that at thirty he was using a cane; soon thereafter a crutch and cane; later two crutches, and finally to the wheel chair, for the last part of his life. During this period he was carried up into his office and down from his office into the court-room, but he never surrendered, but continuing to try law-suits until the end came. He would stand before the jury, leaning back against the table, supported by his two crutches, with his long hair, swarthy complexion, six feet high, wasted by his diseases, day after day, with the greatest arguments ever made to a jury. And, as a cross-examiner, he had such success that many of his cases came to him with these words upon the tongue of his new client, who had been grilled by him, when Metcalf was against him, 'I want you to tear that defendant to pieces as you did me!' Mr. Metcalf had the most wonderful courage of any man with whom I ever came in contact. He was known by all, far and near, even by old ladies, as 'George.' We were partners for nine years. We were such at his decease. He spent one term in the legislature of Ohio, while on crutches; refused the Common Pleas judgeship because of ill-health; refused to run for Congress for the same reason; and despite of his health he accumulated enough to care for his widow. A kinder husband, truer brother, partner and citizen never lived. His passing away reminded me of William Wirt's blind preacher of whom we have all read, and what a power he was."



## COULD REACH THE JUGULAR VEIN

"Mr. Metcalf had wonderful adaptation for the law; while he was well grounded in legal principles, his rheumatic condition prevented close study, but he could tell what ought to be done, and what the law upon a given point ought to be. Was a great manager in a law-suit. Besides, he was one of the most analytical reasoners I ever knew. He would differentiate cases, and was such an enthusiastic believer in his position that he would make the court, the jury and the hangers on see the thing as he saw it. And thus would walk out of court winner, if a case could be won."—*G. J. Clark, who practiced at the same bar for ten years.*

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## JAMES WILSON GREATER LAWYER THAN JUDGE

"'James Wilson on the bench was not the equal of Mr. Wilson at the bar, nor did his lectures entirely meet the expectations that had been formed,' wrote William Rawle, who practiced under him; and another contemporary said: 'These lectures (since included in his works, published in 1804), have not met with general approbation, nor is their excellence altogether undisputed!' It seems that his violent criticisms of Blackstone, and his ultra-Federalist views as to the powers of the National Government, did not commend themselves to the lawyers or to the public. \* \* \* The truth is, Wilson's temper and habits were those of an advocate, rather than of a judge. His style was diffusive; and the lectures, though scholarly, and elegant essays on general jurisprudence embellished with historical allusions, were not useful instruction in Common Law.'"

—*Warren's 'History of the American Bar,' 348.*

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## WENDELL PHILLIPS' ORATORY

"I have heard most of the great orators of the world, but none of them produced such an immediate and lasting effect upon their audience as Wendell Phillips. He was the finest type of a cultured New Englander. He was the recipient of the best education possible in his time and with independent means which enabled him to pursue his studies and career. Besides he was one of the handsomest men I ever saw upon the platform, and in his inspired moments met one's imaginative conception of a Greek God.

"Phillips rarely made a gesture or spoke above the conversational, but his musical voice reached the remotest corners of the hall. The eager audience, fearful of losing a word, would bend forward with open mouths as well as attentive ears. It was always a hostile audience at the beginning of Mr. Phillips' address, but before the end he swayed them to applause, tears, or laughter, as a skilled performer upon a perfect instrument. His subject was nearly always slavery, his views very extreme and for immediate abolition, but at that time he had a very small following. Nevertheless, his speeches, especially because of the riots and controversies they caused, set people thinking, and largely increased the hostility to slavery, especially to its extension."

—*Chauncey M. Depew, 'Memories of Eighty Years,' 313.*



## SAMUEL F. MILLER (1816-1890), Iowa

### TRIAL BY JURY

"I must confess that my practice in the courts, before I came to the bench, left upon my mind the impression that as regards contests in the courts in civil suits, the jury system was one of doubtful utility; and if I had then been called upon, as a legislator, to provide for a system of trial in that class of actions, I should have preferred a court constituted of three or more judges, so selected from different parts of the district or circuit in which they presided as to prevent, so far as possible, any preconcerted action or agreement of interest or opinion, to decide all the questions of law and fact in the case, rather than the present jury system. \* \* \* An experience of twenty-five years on the bench, and an observation during that time of cases which come from all the courts of the United States to the Supreme Court for review, as well as of cases tried before me at *nisi prius* have satisfied me that when the principles above stated are faithfully applied by the trial court, and the jury is a fair one, as a method of ascertaining the truth in regard to disputed questions of fact, a jury is in the main as valuable as an equal number of judges would be, or any less number. And I must say that in my experience in the conference room of the Supreme Court of the United States, which consists of nine judges, I have been surprised to find how readily those judges come to an agreement upon questions of law, and how often they disagree in regard to questions of fact, which apparently are as clear as the law. I have noticed this so often and so much that I am willing to give the benefit of my observation on this subject to the public, that judges are not pre-eminently fitted over other men of good judgment in business affairs to decide upon mere questions of disputed fact."

—*Mr. Justice Miller, in an article on "The System of Trial by Jury."*  
*Am. Law Review*, vol. XXI, pp. 861-863.

### SPECIFIC POWERS OF GOVERNMENT

"It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether state or national, are divided into the three grand departments—the executive, the legislative and judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and define these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other. To these general propositions there are in the Constitution of the United States some important exceptions. One of these is, that the President is so far made a part of the legislative power that his assent is required to the enactment of all statutes and resolutions of Congress.

"This, however, is so only to a limited extent, for a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds of each House of Congress.

"So, also the Senate is made a partaker in the functions of appointing officers and making treaties, which are supposed to be properly executive, by requiring its consent to the appointment of such officers and the



ratification of treaties. The Senate also exercises the judicial power of trying impeachments, and the House of preferring articles of impeachment.

"In the main, however, that instrument, the model on which are constructed the fundamental laws of the States, has blocked out with singular precision, and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and the judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments cannot be exercised by another."

—*Mr. Justice Miller, in Kilbourn v. Thompson, 103, U. S., 190.*

### PURITY OF ELECTIONS

"It is as essential to the successful working of this Government that the great organisms of its executive and legislative branches should be the free choice of the people as that the original form of it should be so. In absolute governments, where the monarch is the source of all power, it is still held to be important that the exercise of that power shall be free from the influence of extraneous violence and internal corruption. In a republican government, like ours, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by popular elections, the temptation to control these elections by violence and by corruption is a constant source of danger. Such has been the history of all republics, and, though ours has been comparatively free from both these evils in the past, no lover of his country can shut his eyes to the fear of future danger from both sources. If the recurrence of such acts as these prisoners stand convicted of are too common in one quarter of the country, and give omen of danger from lawless violence, the free use of money in elections, arising from the vast growth of recent wealth in other quarters, presents equal cause of anxiety. If the Government of the United States has within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it, are at the mercy of the combinations of those who respect no right but brute force, on the one hand, and unprincipled corruptionists on the other."

—*Samuel F. Miller, Ex parte Yarbrough, 110 United States Rep., 651 (1883).*

Miller grew up on his father's farm in Ky., and until 12 had no means of education. His general schooling was confined to the schools of Richmond, Ky., for three years; studied medicine at Transylvania, Lexington, and graduated after two years; practiced medicine 10 years; believed the medical profession no science, but almost wholly empirical and untrustworthy, and had no belief in the remedies he prescribed; studied and was admitted to the bar, in 1847; freed his slaves, and removed to Keokuk, Iowa, upon the advice of John J. Crittenden, achieved success at the Bar, and in less than 12 years was a member of the U. S. Supreme Court, at 46 years of age, by appointment of Lincoln, in 1862.

"It is safe to say," says Mr. Justice Harlan, "that with the exception of Chief Justice Marshall, no American judge has made a deeper impression upon the jurisprudence of this country than he has."

### THE U. S. CONSTITUTION

"It is my profound belief that the wisdom of man, unaided by inspiration, has produced no other writing so valuable to humanity as the Constitution."—*Sam'l F. Miller.*



## THE WEIGHT OF A DECISION

"The convincing power of the opinion or decision in a reported case must depend very largely on the force of the reasoning by which it is supported, and of this every lawyer and every court must of necessity be his own judge."

—*Sam'l F. Miller, from letter to Judge Jno. F. Dillon, Nov. 16, 1885.*

## THE LAWYER'S ESTATE

"The true lawyer is seized of an estate as secure and venerable as an estate in lands; its income, better than rents; its dignity, higher than ancestral acres."—*Sam'l F. Miller, a common saying.*

## THE INFLUENCE OF A GREAT JUDGE

"The influence of a great judge, embodied in the reports of a court of high character, will be felt as establishing rules of conduct and the decision of important questions, and will be commented upon and appreciated by a large class constituting a learned profession long after contemporary addresses or public efforts, of whatever character, shall have passed into forgetfulness."—*Sam'l F. Miller, remarks at death of Chief Justice Waite, 1888.*

## THE USE OF ADJUDGED CASES

"There are three kinds of cases to be considered by any judge of a court of last resort. There is a large class of cases, perhaps the largest, which must be decided by principles that are not disputed. That is to say, that the propositions advanced by the counsel on opposing sides are such as will be generally conceded, and need no support from judicial decisions. In these cases, which in my experience are the most numerous, the work of the judge is to determine from the case before him, that is, from the pleadings and the evidence, whether it falls within the principles offered by the plaintiff or defendant for its solution, or within some modification of these principles which counsel of either party has adopted. The decision of this question demands the highest general rules of law, which lie at its foundation as a science, and the aid given in such cases by the decisions of other courts is not much. The scientific arrangement of the facts of the case, as seen in the pleadings and evidence by a well-trained judicial mind, must in this class be always the main reliance for a sound administration of the law.

"There is another class of cases, the decision of which turns upon a construction of constitutions and statutes. In these the decisions of the highest courts of the government which adopted the Constitution or enacted the statutes should be conclusive in most cases. In the construction of the Constitution of the United States, or an act of Congress the decisions of the Supreme Court of the United States ought, until revised by that court, to be followed almost without question. The court has given expression to the rule in regard to the construction of the State constitution and statutes of the highest courts of the States enacting them, in the adoption of the principle that even in the case of co-ordinate and concurrent jurisdiction it will follow those courts in the construction of the statutes and constitution of their respective States.

"A third class of cases are those which arising under the general rules of the common law, or in equity, and in which the abstract reasons for one rule, or for another opposed to it, are nearly balanced where it is more important that the rule should be established and followed with uniformity than that one or the other rules should prevail. In this class, if there are differences in the cases decided, the question should



be determined by the weight of authority. It is in this class of questions that adjudged cases are most useful, and in which the examination and comparison of them by counsel are of great aid to the court, and are likely to reward the labor of those who make the examination thorough. Perhaps to this class should be added those in which the decisions of the courts have become 'rules of property,' governing the rights of parties to real or personal property.

"As regards the relative weight to be given to the different courts whose decisions are relied on, it is more difficult to speak. I shall say nothing of the value of the decisions of the English Courts in questions purely of common law or in equity. Not because I underrate them, but because everyone understands their value, especially in equity and admiralty cases.

"Leaving these, and the questions arising under State statutes, the value of a decision is estimated by the character of the court, or of the judge who delivered the opinion, or by both. These vary much in the courts of the United States. Without being invidious or undertaking to name other courts in the history and character of the Supreme Court of Massachusetts which entitle its reported decisions for the last hundred years to great consideration. But a decision often has a merit apart from the standing of the court in which it is made, owing to the high character of the judges of the court, or of the judge who delivered the opinion. Opinions delivered by such judges as Marshall, Taney, Kent and Shaw have a value apart from the courts in which they were delivered. Even the dissenting opinions of these men and their *obiter dicta* have weight in the minds of lawyers who have a just estimate of their character, which they cannot give to many courts of last resort or acknowledged ability. After all, the convincing power of the opinion or decision in a reported case must depend very largely on the force of the reasoning by which it is supported, and of this every lawyer and every court must of necessity be his and its own judge."—*Sam'l F. Miller, in letter to Judge Jno. F. Dillon, Nov. 16, 1885.*

### "COME TO THE POINT"

Once Judge Miller was holding court, in the U. S. Circuit, at St. Louis, Mo., on an extremely warm day, and listening to a dry argument in an equity suit. The court-room was deserted save for the Judge, the lawyers and the court attendants, the latter of whom were dozing in their chairs. Miller's cravat and collar were loosened and he was vigorously fanning himself, shifting uneasily in his seat, and glaring impatiently at the lawyer, who had been talking on and on unceasingly. Finally he could no longer restrain himself; he started up, leaned over his desk, and fairly shouted at the lawyer the remark: "Con dem it, Brown, come to the point." The lawyer, startled into confusion by this judicial interruption, said: "What point, your Honor?" "I don't know," blurted Judge Miller, "*any point, some point.*" Poor Brown quit ignominiously, and with little hope of his having made a very strong impression. So terrible was the withering manner of the Judge at times that even experienced attorneys dreaded the task of arguing a case before him which they thought not likely to meet his approval. And yet, they appreciated his innate kindness and sincerity, and when he suddenly died, Oct. 13, 1890, the members of the bar of the U. S. Supreme Court all felt that they had lost a friend.

—*Horace Stern, on Judge Miller, 6 Great American Lawyers, 583.*

### THE COUNTRY LAWYER

"The great lawyers of the future are to be raised up in the agricultural regions, and Iowa stands as fair a chance as any other State. In the bar



of the cities of New York and Philadelphia there are no worthy successors to the great men of the past. There are none who equal Sergeant and Binney of Philadelphia, nor Odgen of New York City, nor Webster of Boston. The practice consists of motions, attachments, injunctions, and cases referred to referees, and seldom is any case tried in the good old-fashioned way of argument and evidence under issues of law and fact, but each morning in the court appears a row of lawyers, standing in line, waiting to catch the eye of the judge and to ask his signature to orders and motions which control the case. This is not the way that great lawyers are made. In the practice of the country towns, in an agricultural population like Iowa, the young lawyer has his half dozen cases in a year, has ample time and opportunity to make full preparation, both as regards the facts of his case and the law; having but a few books, they are necessarily the best, and using them well and thoroughly, he investigates the principles at issue, runs them down to their source in the common law, and in doing this, familiarizes himself with the great principles on which law is administered. This naturally makes him a lawyer on principle, with substantial bases of knowledge in the foundations of the law, and to this class must the nation look for its future Mansfields and Marshalls. \* \* \* I have to add that the bar of Iowa is equal to the bar of the East, in all that pertains to the practice of law, and to the presentation of the principles on which the case is founded. Twenty-four years of service have never brought me to be ashamed of the bar of my own State."

—*From address at Opening of the Supreme Court of Iowa, at Des Moines, in the new Capitol, June 8, 1886. Stiles' "Recollections," etc., 177.*

#### JUDGE JOHN F. DILLON ON MILLER AS A CONSTITUTIONAL LAWYER

"By successive judgments of the Supreme Court, during Marshall's thirty-five years' service, from 1801 to 1835, the question was solved, and the Constitution received its fixed and permanent form as far as its original provisions are concerned. He and his associates established with equal firmness the principle on the one hand of nationality in the general government, and on the other, the reserved rights of the States and the people as against the central government. And they also established the doctrine not less vital and important, that the Supreme Court, in Ambassador Bryce's language—'*is the living voice of the Constitution,*' and the ordained tribunal peacefully to settle all rival powers and pretensions of the States and Nation, and all controversies and cases, when presented for judicial decisions, arising under the Constitution and laws of the United States. \* \* \* The rebellion showed that the source of danger to the Union was at that time in the States, and not in the central government. Thirteen States were able to combine into a Confederacy, form and establish a government, raise armies and wage a formidable war for four years against the Union from which they had seceded. The natural effect of the failure of the Rebellion was a strong sentiment to enlarge and strengthen the powers of the States. First, came the 13th Amendment abolishing slavery, the 14th Amendment, directly operating on the States and prohibiting any State of the Union from depriving any person of life, liberty or property, without due process of law, or denying to any person, black or white, the equal protection of the law, and, then, the 15th Amendment, forbidding a denial of the elective franchise, on account of race, color or previous condition of servitude. These amendments and the legislation of Congress, and of certain Southern States, gave rise to an enormous amount of litigation and to new questions as vital, as difficult, as supremely important as any that had arisen and been determined by the Court



prior to the Civil War. In the decision of these questions, Mr. Justice Miller took a most conspicuous, active, influential, and often, decisive part. In Federal constitutional law, he became an acknowledged master, and his judgments have given him an established and permanent place in our judicial and constitutional history as a great and illustrious Judge, second only to Chief Justice Marshall."

—From letter to E. H. Stiles—"Stiles' Recollections and Sketches," 173-5.

## CHARLES NOBLE GREGORY ON MILLER'S DECISIONS

"Judge Miller, in his 28 years on the U. S. Supreme Bench, wrote 783 opinions, of which 169 are dissenting opinions, and 141 relate to Constitutional law."—"Stiles' Recollections," etc., 175.

"Miller graduated in medicine, after three years study at Transylvania University, Ky., practiced his profession ten years at Barboursville, Ky., but shared his office with a lawyer, whose books he secretly studied; deeming medicine not a science at all, but almost wholly empirical and untrustworthy, he was skeptical of the remedies administered. He was a good debater, and finally determined to practice law. It is said that one night, returning from a medical call, he threw his pill-bags over the fence, with the remark, 'There, go it! I am going into a profession where talent is appreciated.' Upon the advice of John J. Crittenden, removed from his native hotbed of democracy to the free State of Iowa, settling at Keokuk, where his abolitionism could have full play. He was then thirty-one, with a wife and two children. He soon acquired a good practice, not only in Iowa, but Illinois as well. For the next 15 years, '47 to '62, he gave his time unceasingly to the law, and was then appointed by President Lincoln to the Supreme Bench of the United States.

"This was the first and only public office he ever held. He held the position for 28 years, and died in harness. Was always a strong advocate for federal power, as against the State. His habit was to reason out an opinion, and then search for the authorities for the solution of the problems; and then, unless overwhelming authority to the contrary was brought to convince him that the conclusion he had reached was not in accord with the law, he adopted his own deliberations as final. He sought the sensible, the one which would produce the best practical results.

"Great war questions came before the Court, while he was a member, whether the Confederacy was to be treated as a belligerent, and if so its rights as such, the rights of neutrals, litigation concerning confiscation, prizes, blockades and non-intercourse, questions of the jurisdiction of military tribunals, the suspension of *habeas corpus*, problems of financial legislation, tax laws, the reconstruction laws, the recent amendments to the Constitution, interstate commerce, telegraph and transcontinental railroads, Indian wards, polygamy, anti-Chinese legislation, the Enforcement Act, Granger Cases, federal control over Congressional elections, the power of the President to remove from office, the Virginia Land Cases, Coupon Tax Cases, power of States to prohibit the liquor traffic, repudiation of State debts, riot cases, the Chicago anarchists, etc., etc.

"Judge Miller was not profoundly learned, either in subjects of general education, or in the literature of the law. His success as a lawyer and as a Judge rested not upon his knowledge, so much as upon his powers of reasoning, upon the machinery of his mind rather than upon the raw material which he was able to furnish to that machinery. He was not of a scholarly turn of mind; he was too impatient to obtain common-sense results, to delve into the obscure learning of the past. His intellect was so acute, and his logical faculties so keenly developed that he relied



largely upon his own ability to solve problems without reference to the wisdom of the older jurists. In short, the reason of the law was more important to him than a careful and technical adherence to the doctrine of *stare decisis*. He was a Marshall rather than a Story, a thinker rather than a compiler of the thoughts of others. In every question that presented itself he applied what may be called a legal 'instinct,' so that when he had arrived at his solution of any problem he might well have said, 'If this is not the law it ought to be.' His masterly greatness in handling new constitutional questions led Mr. Justice Harlan to say in referring to him: 'It is safe to say that, with the exception of Chief Justice Marshall, no American judge had made a deeper impression upon the jurisprudence of this country than he has.' "

### TESTIMONY OF HORACE STERN

"The years during which Miller sat on the Supreme Court Bench were the most important, in the domain of constitutional law, next to the period of the constructive work of Marshall; and during those years Miller was the dominant personality on that bench, and the work then done by the Supreme Court was of the highest excellence, determining, as it did, the method of reconstruction of the nation, preserving unimpaired the federal nature of the Government, in spite of the centralizing purpose of the 14th amendment, and successfully solving the most complex and fundamental industrial problems which had ever confronted the American people."—*Horace Stern, on Judge Miller, 6 Gt. Am. Lawyers, 583.*

### "HIGH ON INJUNCTIONS"

A young lawyer who applied to Judge Miller, in the United States Circuit, for an injunction, to establish the right to a restraining order, was reading from "High on Injunctions." When the Judge, stopping him, asked: "Young man, what are you reading from?" The attorney answered, "From 'High on Injunctions.' " "Well," said the Judge, "you needn't read any further. I was making law before the author of that book was born."

### "TELL ME WHAT YOU THINK"

"Tell me what *you* think about this, for I esteem your opinion of much more value than that of the authority cited." Said the Judge to a lawyer who was citing the opinion of an inferior court.

### "NO MAN HIGHER THAN THE LAW"

"No man in this country is so high that he is above the law. No officer of the law may set that law in defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives."—*From opinion, in the Arlington cases, 106 U. S., 106 and 196 (1882).*

### REASON FOR A JUDGE'S DECISION

"I regret to find you are in trouble about my concurrence in the recent decision of the Supreme Court, in regard to the sale of goods imported from abroad or from another State in the original packages. I venture



to hope that I shall not wholly forfeit your esteem, because, in obedience to that sense of conscientious duty, which I have no doubt prompts you in this matter, I have felt bound to follow the decision made by this Court more than sixty years ago, which has never been doubted or disputed from that day to this. Indeed, that decision, in addition to being a decision of this Court, was one which fell from the lips of the greatest constitutional lawyer that this government ever had. It was based upon a construction of the Constitution of the United States. This constitution has not been altered since, and the judgment of the Court has remained without question, from that day to this, now sixty-three years ago. Many people, like you, I think, have the idea that the Supreme Court is only bound in its decisions by the views which they may have of abstract moral right. But, we are as much sworn to decide according to the Constitution of the United States as you are bound by your conscience to a faith in the Bible, which you profess to follow."

—*From a letter to Rev. J. P. Teter, a Methodist minister, of Oskaloosa, Ia., a personal friend, in defense of his decision in the Original Package Case.*

### CHARLES LAMB'S OLD BENCHER

Some lawyer has said that Charles Lamb's description of an Old Bencher applies to Judge Miller: "His step was massive and elephantine, his face square as the lion's, his gait peremptory and path-keeping, indivertible from his way as a moving column."

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### OUR ANCESTORS AND OURSELVES

"Too many of our forefathers, it is true, deserve to be under the suspicion expressed by the market-man who was exhibiting his array of 'newly-laid eggs, fresh eggs and plain eggs,' to a young housekeeper, who finally asked: 'Are these eggs really fresh?' 'Well, madam,' he replied, 'we call them Saturday night eggs; they've tried all the week to be good.' And we are so compromising and tender in dealing with doubtful subjects that we follow the advice given to a man who asked how to tell a bad egg: 'Well, if you have anything to tell to a bad egg you had better break it gently.' Some have that kind of a conscience which was described by a small boy as 'the thing that makes you feel sorry when you get found out,' and their idea of commercial integrity was expressed by the man who said, proudly, 'At last I can look the world in the face as an honest man. I owe no one anything; the last claim against me is outlawed.' Some aim high, but from the result they must have shut their eyes when they fired, and although as a Nation we pride ourselves upon our common sense, so that we can truly say not every man is made a fool of, the observer of men and things might say, 'every man has the raw material in him.' But seriously speaking, we abate in no degree the claim that the best traditions of our forefathers have not degenerated in these modern days. Our hearts beat with a quicker throb at the recollection of the achievements of these last pregnant years; the eye lights with enthusiasm at the sight of the flag whose fluttering folds have witnessed such scenes of danger and inspired such daring deeds, and our voices shout in unison of acclaim the achievements of what a wondering African called 'the angry Saxon race.' "

—*From Speech of Judge Henry E. Howland, President of New England Society, N. Y. City, Dec. 22, 1899.*



## JAMES MONROE (1758-1831), Virginia

### THE MONROE DOCTRINE

"We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny by any European power, in any other light than as the manifestation of an unfriendly disposition towards the United States."

—*Lawyer, Legislator, Senator, U. S. Minister to France, Governor of Va. (twice), and President (the 5th) of the U. S. for eight years.*

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### MUSIC

"Music expresses feeling and thought, without language. It was below and before speech, and it is above and beyond all words. Beneath the waves is the sea—above the clouds is the sky. Before man found a name for any thought, or thing, he had hopes and fears and passions, and these were rudely expressed in tones. Of one thing, however, I am certain, and that is, that Music was born of love. Had there never been any human affection, there never could have been uttered a strain of music. Possibly some mother, looking in the eyes of her babe, gave the first melody to the enraptured air. Language is not subtle enough to express all that we feel; and when language fails, the highest and deepest longings are translated into music. Music is the sunshine—the climate—of the soul, and it floods the heart with a perfect June. I am also satisfied that the greatest music is the most marvelous mingling of Love and Death. Love is the greatest of all passions, and Death is its shadow. Death gets all its terror from Love, and Love gets its intensity, its radiance, its glory and its rapture from the darkness of Death. Love is a flower and grows on the edge of the grave. The old music, for the most part, expresses emotion, or feeling, through time and emphasis, and what is known as melody. Most of the old operas consist of few melodies connected by unmeaning recitative. It is as though a writer should suddenly leave his subject and write a paragraph consisting of nothing but a repetition of one word like 'the,' 'the,' 'the,' or 'if,' 'if,' 'if,' varying the repetition of these words, but without meaning—and then resume the subject of this article. \* \* \* When I read Shakespeare, I am astonished that he has expressed so much with common words, to which he gives new meaning; and so when I hear Wagner, I exclaim: 'Is it possible that all this is done with common air?'"

—*Robt. G. Ingersoll, on 'The Music of Wagner,' at a banquet in N. Y. City, April 2, 1891.*



## JNO. T. MORGAN (1842-1907), Alabama

### THE PANTHEON OF AMERICA

"The Pantheon of America is in the hearts of the people. I do not desire to see the time when we shall build a vast temple here and congregate in it the marble images of our great men who have preceded us. It is not at all necessary because the gratitude of the American heart keeps pace with the realization of the benefits we are deriving daily and hourly from the work of the great statesmen and legislators of the country. The people drape the noble memoirs of the men they honor in the habiliments of light and glory, soft-hued by gratitude and love, and they keep in their Pantheon the undying memorials of those who have been true and honest in their dealings with their welfare. What body, or whose image, in marble and bronze, has ever found a nobler shrine than this?"—*John T. Morgan*,

From an address on the Life and Character of Sam'l J. Randall, U. S. Senate, Sept. 13, 1890. He was a strong advocate of the Nicaragua Canal; a member of the Court to arbitrate the Bering Sea case; made and carried the burden of the Spanish War; made the case of Hawaii his quarrel, and it was really he that annexed the island to the U. S., the most musty and ancient state paper was his delight; he also read all the messages of the Presidents of the U. S.

### PATRIOTISM

"Patriotism is half hid from view when we call it 'love of country.' The old Latin word from which it springs would remind us that it is a thing of flesh and blood and spirit, the filial love of the fatherhood, the brotherly love of our countrymen, the children of the fatherhood."

—*Jno. T. Morgan, idem.*

### FRATERNITY

"Fraternity is greater than liberty or equality, because it is their creator, not their creature. A restful peace makes all things possible."

—*Jno. T. Morgan, idem.*

### SAMUEL J. RANDALL

"When about a month before the period of dissolution, Mr. Randall turned his thoughts in a new direction, and contemplated a new life in the great beyond, he acted upon convictions that moved his soul to its very foundation. Perhaps he had no prejudice to yield, perhaps no new line of thought to take up when he gave himself to the church of God, as one of his willing servants; but there was a heroism in that act which may be called the heroism of virtue; knowing his fate, and believing from his early instruction which he had received, that there was but one course that would lead him to safety in the future, he laid aside without hesitancy his connection with all the past, and marched confidently forth to take the Savior by the hand. It requires more moral courage to perform that act in the face of a censorious world, even when death is very near, than it does to fight the severest battle an American soldier ever engaged in."

—*From Senator Morgan's address on the 'Life and Character of Sam'l J. Randall, U. S. Senate, Sept. 13, 1890.*



## SAVOYARD ON MORGAN

"Morgan has no doubts. He is the very definition of optimism, intrepidity and tenacity. Stephen A. Douglas declared that we must be 'an ocean-bound republic.' That is the doctrine of John T. Morgan. For twenty-four years Morgan has been a senator in Congress and it is not to be supposed that he has participated in the long parliamentary warfare and escaped scars. Even Caesar had them. David Turpie was a Senator from Indiana for twelve years and he had the most terrible tongue since John Randolph of Roanoke left the scene. He was as polished as Lamar or Sumner, could be as brutal as Hardin or Ben Butler, and as sardonic as Thaddeus Stevens or John J. Ingalls. His sarcasm sometimes stunned like the blow of an axe, sometimes cut like the thrust of a stiletto, the bludgeon or the rapier were alike his weapon. The old fellow used to sit silent for weeks, listening ever, observing always. A partial paralysis of the muscles of the neck caused a constant motion of that enormous head filled with intellect, and he was constantly chewing something. It was not tobacco nor was it tulu—nobody knew what it was, but it was a reminder of a sheep and the cud. Certain it was that eye saw everything, and that mind observed everything. He was for the Canal, but in answer to a week's speech of Morgan's, he undertook to show that the Canal could never be constructed, and that a harbor at Greytown was simply out of the question, an impossibility. Fancy this, said in one of the most rasping voices and tantalizing manner ever given to man.

"Mr. President, I thought I observed in the remarks of the honorable and learned Senator from Alabama the other day a tone of bitterness, at least acerbity, when he made the reproach against the people and the government of the United States, that the Isthmus will stand between the two oceans. Mr. President, the government of the United States did not put that isthmus there. It was placed there without consulting the government or the people of this country. \* \* \* Almighty God, sir, does not require of men impossibilities, and men themselves, must be content with a little less dominion over the earth than the Maker.'

"Nobody can measure the sarcasm of that, who did not see and hear Turpie as he uttered it; but it was little Morgan heeded it. He could give blows and he could take them. Wherever and whenever a mighty work is to be performed, the instruments are there, fashioned by destiny for the labor. Elizabeth of England, William of Orange, and Henry of Navarre curbed the power of Spain and gave a mortal blow to a dominion that was not fit to be."

## THE NUMBER OF SUPREME JUDGES UNPRESCRIBED BY THE CONSTITUTION

"The number of the judges of the United States Supreme Court is not prescribed in the Constitution. Indeed, no reference is made to the question whether the Court is to be composed of one or more judges, except in the sixth section of the third article, in which the Chief Justice is required to preside over the trial of impeachment of the President of the United States. If it had been intended that the Supreme Court might be composed of a single judge, the office of Chief Justice would have been mentioned *eo nomine*."

—"Partisanship of the Supreme Court." 132 N. A. Am. Review 176 (1881).

## AN INDEPENDENT JUDICIARY

"The independence of the judiciary, when coupled with the supremacy of their power and the inviolability of their decrees in the field of juris-



diction assigned to them, seems almost to lift them to a height of authority that is too autocratic for harmonious companionship with the other departments of a republican government. But these high powers conferred upon the judiciary are the very essence of free government, because they are necessary to give practical force and effect to the laws which they themselves establish. It behooves a free people that their judges should be above the 'influence of fear, favor, affection, reward, or the hope thereof,' so that justice shall not be denied to the poor or humble man, or sold to the rich; and that it be not biased by the hope of favor, or the fear of giving offense to popular sentiment or political power."—*Idem*.

## DECISIONS WHICH HAVE IMPAIRED THE COURT'S INDEPENDENCE

"The Dred Scott decision, the Legal Tender cases, the decision of the Electoral Commission, and the cases construing the election laws, and the rights to punish State judges for obeying constitutional State statutes, have, in their turn, greatly impaired the confidence of many people in the independence of the judges of the Supreme Court."—*Idem*.

Mr. Morgan argues, in this article, that Congress should be deprived of the power to increase above a fixed basis, in ratable proportion to the increase of our population, and the number of States in the Union, or diminish the number of judges of the Supreme Court at its pleasure.

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## THE LADIES

"Next to God, we are indebted to woman for life itself, and then for making it worth living. To describe her the pen should be dipped in the humid colors of the rainbow, and the paper dried with the dust gathered from the wings of a butterfly. There is one in the world who feels for him who is sad a keener pang than he feels himself; there is one to whom reflected joy is better than that which comes direct; there is one who rejoices in another's honor more than her own; there is one upon whom another's transcendent excellence sheds no beam but that of delight; there is one who hides another's infirmities more faithfully than her own; there is one who loses all sense of self in the sentiment of kindness, tenderness and devotion to another—that one is she who is honored with the holy name of wife. With the immortal Shakespeare we may say:

" 'Why man, she is mine own;  
And I as rich in having such a jewel,  
As twenty seas, if all their sands were pearl,  
The water nectar, and the rocks pure gold.'

"I can do no greater justice to my subject, the occasion, and myself, than by closing with the words of Shelley:

" 'Win her and wear her if you can. She is the most delightful of God's creatures. Heaven's best gift; man's joy and pride in prosperity; man's support and comfort in affliction. I drink her health. God bless her.' "

—*William B. Melish, of Cincinnati, O., at Pittsburg, Pa., 1898 at Banquet of Grand Encampment of Knights Templars of the U. S.*



## OLIVER P. MORTON (1823-1877), Indiana

### MUST HAVE A NATION

"We must have a nation. It is necessity of our political existence, and we find the countries of the Old World now aspiring for nationality. Italy, after a long absence, has returned. Rome has again become the centre and the capital of a great nation. The bleeding fragments of the beautiful land have been bound up together, and Italy again resumes her place among the nations. And we find the great Germanic family has been sighing for a nationality. That race, whose overmastering civilization is acknowledged by all the world, has hitherto been divided into petty Principalities and States, such as Virginia and South Carolina aspire to be, but now are coming together and asserting their unity, their national existence, and are now able to dominate all the nations of Europe. We should then cherish this idea, that while the States have their rights, sacred and unapproachable, which we should guard with untiring vigilance, never permitting an encroachment, is as much a violation of the Constitution of the U. S. as to encroach upon the rights of the general Governments, still bearing in mind that the States are but subordinate parts of one great nation is over all even as God is over the Universe. Without entering into any of the consequences that flow from this doctrine, allow me for tonight to refer to that great national attribute, that great national duty, the duty and the power to protect the citizen in the enjoyment of life, liberty, and property. If the Government of the U. S. has not the power to protect the citizens of the U. S. in the enjoyment of life, liberty and property in cases where the States fail, or refuse, or are unable to grant protection, then that Government should be amended, or should give place to a better. \* \* \* If a mob in London should murder half a dozen American citizens, we would call upon that government to use all its power to bring the murderers to punishment, and if Great Britain did not do so, it would be regarded as a cause of war. And yet some people entertain the idea that our Government has the power to protect its citizens everywhere except upon its own soil. The idea that I would advocate, the doctrine that I would urge as being the only true and national one, flowing inevitably from national sovereignty, is that our government has the right to protect her citizens in the enjoyment of life, liberty and property wherever the flag floats, whether at home or abroad."

—On "*The National Idea*," at Providence, R. I.

### THE DEMOCRATIC PARTY

"The Democratic party is like a man riding on a train backward; they never see anything till they have gotten by it."

Graduated at Miami University; practiced law at Centerville, Ind., elected circuit judge in '52; was the Great 'War Governor,' during the Civil War; U. S. Senator in 1867; was attacked with a paralytic stroke in '65, and during the remaining 12 years of his life was never able again to stand without support; yet was a leader of his party, one of the most forceful debaters in public life, active in reconstruction legislation, a leader in the Johnston impeachment, declined under Grant the ministership to England, and the Chief Justiceship of the U. S.; endeavored to secure a change in the method of choosing the presidents, and had he succeeded the Hayes-Tilden controversy would have been obviated; was a member of the Election Commission.

—See *Foulke's Life of Morton*, 2 vols., 1899.



## EUGENIUS ARISTIDES NISBETT (1803-1871), Georgia

### MISTAKE AND IGNORANCE OF THE LAW

"The clear and practical difference between mistake and ignorance of the law. \* \* \* It has been ridiculed as a quibble, but we shall show that it has been taken by able men and acted upon by eminent courts. Ignorance implies passiveness; mistake implies action. Ignorance does not pretend to knowledge, but mistake assumes to know. Ignorance may be the result of laches, which is criminal; mistake argues diligence, which is commendable. Mere ignorance is no mistake, but mistake always involves ignorance, yet not that alone. \* \* \* Mere ignorance of the law is not susceptible of proof. Proof cannot reach the convictions of the mind undeveloped in action; whereas, a mistake of the law developed in overt act is capable of proof like other facts. \* \* \* No man can be excused upon a plea of ignorance of the law, for disobeying its injunctions or violating its provisions, or abiding his just contracts. He is presumed to know the law, and if he does not know it, he is equally presumed to be delinquent. The principle is of universal application in criminal cases. In civil matters it ought not to be used to effectuate a wrong. That is to say, it cannot be a sufficient response to the claim of an injured person that he has been injured by his own mistake of the law, when the respondent, against conscience, is the holder of an advantage resulting from that mistake. The meaning, then, of the maxim is that no man can shelter himself from the punishment due to crime, or excuse a wrong done to, or a right withheld from another, under a plea of ignorance of the law. The maxim contemplates the punishment of crime, the redress of wrong, and the protection of right. It is reasonable so to construe it, as to apply it to one who has not only done no wrong, and withheld no right, but is himself the injured party, as in this case."

He was a native of Georgia, and was Judge of its Supreme Court, from 1845 to 1853. Says Joseph R. Lamar: "His opinions illumine the mind, and both instruct and convince the reader. The student is impressed, not only with the fact that the writer was a great man, but also that he was a great man."—4 *Great American Lawyers*, 361.

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### WASHINGTON

"You claim Washington for Virginia, but I speak the universal language when I repeat the eloquent expression of the most eloquent Irishman: 'No Country can claim, no age appropriate him; the boon of Providence to the human race, his fame is eternity and his residence creation.' Well was it that the English subject could say though it was the defeat of their armies and the disgrace of their policy—even they could not bless the convulsion in which he had his origin, 'for if the heavens thundered and the earth rocked yet when the storm had passed how pure was the atmosphere it cleared, how bright in the brow of the firmament was the planet it revealed to earth.' A hundred years have passed since Washington, crowned with the honors of the successful chieftain, having led his country through the turmoil of seven years of blood and strife, in these streets and under these skies was crowned with the highest civic triumph this Republic can bestow upon its citizen."

—John R. Fellows of N. Y. City, of the N. Y. Southern Society, N. Y. City, Feb. 22, 1889.



## JOHN HENRY NORTH (1789-1831), Ireland

### PROSECUTIONS AND CONVICTIONS

"Prosecutions and convictions, the halter and the prison-bar, are but coarse instruments of conciliation. It is with this as with other virtues of the same family; friendship and affection, reciprocal esteem and mutual forbearance. It possesses that attribute which Shakespeare has ascribed to the quality of mercy: 'It is not strained.' It will not be commanded. A king may place his throne upon the sands, and tell the stormy wave to roll back at his bidding; but whether it be the swelling tide of popular emotion, or the bursting billows of the tempestuous sea, they will equally teach him the littleness of all mortal power, and the impassable limits which nature has prescribed to the authority of man. Do not for a moment suppose that I mean any bold and disrespectful allusion to the parting injunctions of his majesty. I remember too well—who amongst us does not remember that great and ever-memorable day, when the King made his triumphal entry into this city? When the hearts of this mighty population beat together in loyal unison as if it had been of one individual man, and the monarch was received among his people like a father into the bosom of his family? \* \* \*

"To what enchanting prospects did we then surrender our delightful imagination! Why have these blissful hopes been thus severely disappointed? It is not because the great absurdity has been attempted of conciliating men by force of producing, by constraint and violence, that which is the natural offspring of persuasion. Hence what we have seen; hence unfounded committals upon capital charges, refusal of bail and mainprise, the solemn verdicts of grand juries slighted, scorned and set at defiance; hence *ex officio* informations. Do not be persuaded, therefore, gentlemen of the jury, that any verdict which you can pronounce will advance the cause of conciliation; believe it not. You can find no conciliatory verdict, but you may find a righteous one. The Lord Lieutenant has been deceived and abused; your verdict may undeceive and disabuse him. His noble mind has been practiced upon: he has been taught to believe that he is surrounded by conspirators and traitors; that weapons are raised against his life; he has been inducted to bear his manly breast and to desire 'the assassin, if not yet disarmed, to strike now.' Tell him by your verdict, gentlemen, that he has no conspirators to fear; that he has no assassins to dread; that there is no dagger aimed at his life but the 'air-drawn dagger' of his own imagination. Such a verdict as this may not be conciliatory, but in my heart I believe it will be just; it will be one that to the latest hour of your lives will receive the approbation of your own consciences; it is one already anticipated by every thinking and reflecting man in the community; and at no distant period it will be hailed by the whole country."

—*For the defense in Rex v. Forbes, et al. Conspiracy and Riot. In Court of King's Bench, Dublin, 1823. The jury disagreed. North became a judge of the Admiralty in 1830. His character for oratory was very high, and his legal acumen great.*



## RICHARD OLNEY (1835-1917), Massachusetts

### MODIFICATION OF MONROE DOCTRINE

“ ‘Preparedness’ for defensive war is demanded by the country notwithstanding the immense burdens it entails. It involves many besides strictly military problems, and among them one of the most serious is for what contingencies we are to prepare and for what causes we are to be ready to fight. Shall we preserve unchanged our traditional attitude as the champion of every American state against foreign aggression without regard to its consent or request or its preference to take care of itself or to seek some other ally than the United States, and without regard to the surely incurred hostility of the aggressive foreign Power? It has often been claimed, and sometimes effectively asserted, that the United States in its own interest and for its own welfare must firmly resist any surrender of independence or cession of territory by an American state to a foreign power even if the same be entirely voluntary. Suppose, for example, that an American state undertakes to permit an oversea power to plant a colony on its soil, or to convey to it a port or a coaling station, is the United States to resort to war, if necessary, in order to defeat the scheme? These are only some of the injuries which go to show the necessity of a speedy and comprehensive revision of our Latin-American policy. The replies to them involve possibilities which must be taken into account in any intelligent estimate of the kind and measure of military ‘preparedness.’ Obviously our ‘preparedness’ means one thing with the co-operation of Latin-America secured through the American Concert suggested, and a wholly different and much more difficult and burdensome thing without some co-operation. The difficulties of arranging such co-operation are not to be underrated. Yet the exigencies of the situation are apparent and threaten not merely the United States but all American states. It is matter of self-preservation for each, and each should realize the vital interest it has in supporting a Concert is formed on lines broad enough to cover all measures essential to the security of all, which is wholly defensive in nature, and which carefully abstains from any unnecessary impairment of the sovereignty of each.”

—Richard Olney, “Our Latin-American Policy,” Feb. 1916, *North-American Review*, p. 185, vol. 203, No. 273.

### U. S. SOVEREIGN ON THIS CONTINENT

“The United States is practically sovereign on this continent, and its fiat is law.”

—Richard Olney, as Sec. of State, as to Venezuelan dispute, of 1895.

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### DEMOSTHENES ON WHAT LAWS ARE

“The design and object of laws is to ascertain what is just, honorable and expedient; and when that is discovered, it is proclaimed as a general ordinance, equal and impartial to all. This is the origin of law, which for various reasons all are under an obligation to obey, but especially because all law is the invention and gift of Heaven, the sentiment of wise men, the correction of every offence, and the general compact of the State; to live in conformity with which is the duty of every individual in society.”



## DANIEL O'CONNELL (1775-1847), Ireland

### LORD BROUGHAM

"It was sarcastically said of Lord Brougham when he was chancellor of England, that if he had only known a little law, he would have known a little of everything."—*Daniel O'Connell*.

### BIGOTRY

"Bigotry has no head, and cannot think, no heart and cannot feel. When she moves, it is in wrath; when she pauses it is amidst ruin; her prayers are curses, her God is a demon, her communion is death."—*Daniel O'Connell*.

### SUCCESS WITH JURIES

"Mr. O'Connell's success with juries, whether in criminal or at *nisi prius* cases, was very great. His business on circuit was so great that except in very important cases he could not read the prisoner's briefs. But the attorney for the defense used to condense the leading facts and set them down on a single sheet of foolscap, and O'Connell usually found time to peruse and master them, during the speech of the Crown counsel for the prosecution, relying on his own skill in the cross-examination of witnesses, and his power over the jury. He was high in every branch of the profession."—*1 Shiel's Sketches of the Irish Bar, 35-60*.

### OF GREAT PHISIQUE, AND HARD WORKER

"He was a man of lofty stature, strong build, general good health, and accustomed to a great deal of exercise. He was an indefatigable worker, rising in the morning at daybreak. From 1815 to 1831, when he left the bar, his professional income averaged from \$30,000 to \$40,000 a year. He was beyond all doubt the best general lawyer in Ireland. He was offered and declined a seat on the judicial bench, as Master of the Rolls in Ireland."—*1 Shiel's Sketches, 76, note*.

### DESCRIPTION OF, AS A LAWYER

"As a professional man O'Connell, perhaps, for general business was the most competent advocate at the Irish bar. Every requisite for a barrister of all work is combined in him; some in perfection, all in sufficiency. He is not understood to be a deep, scientific lawyer. He is what is far better for himself and his clients, an admirably practical one. He is a thorough adept in all the complicated and fantastic forms which justice, like a Chinese monarch, insists that her votaries shall approach her. A suitor advancing her throne cannot go through the evolutions of the indispensable *ko-tou* under a more skillful master of ceremonies. In this department of his profession, the knowledge of the practice of the courts, and a perfect familiarity with the general principles of law that are applicable to questions discussed in open court, O'Connell is on a level with the most experienced of his competitors; and with few exceptions, perhaps, with the single exception of Mr. Plunket, he surpasses them all in the vehement and pertinacious talent with which he contends to the last victory, where victory is impossible, for an honest retreat. If his mind had been duly disciplined, he would have been a first rate



reasoner and a most formidable sophist. He has all the requisites from nature, singular clearness, promptitude, and acuteness. When occasion requires, he evinces a metaphysical subtlety of perception which nothing can elude. The most slippery distinction that glides across him, he can grasp and hold '*presses manubus*,' until he pleases to set it free. But his argumentative powers lose much of their effect from want of arrangement. His thoughts have too much of the impatience of conscious strength to submit to an orderly disposition. Instead of moving to the conflict in compact array, they rush forward like a tumultuary insurgent mass, jostling and overturning one another in the confusion of the charge; and though finally beating down all opposition by sheer strength and numbers, still reminding us of the far greater things they might have achieved had they been better drilled."

—1 *Shiel's Sketches, etc.*, 81-2.

### AN AMBULATORY RIOT

"O'Connell is in himself an ambulatory riot, who dashes into a legal affray with the spirit of a bludgeoned hero of a fair, determined to knock down every friend of foe he meets, 'for the honor of Old Ireland.' "

—1 *Shiel's Sketches, etc.*, 244.

### HIS ATTACK ON DISRAELI

A good illustration of his style of attack is furnished by the furious altercation between O'Connell and Disraeli, when the latter turned Tory, and was pronounced by O'Connell as "one who, if his genealogy could be traced, would be found to be the lineal descendant and true heir-at-law of the impenitent thief who atoned for his crimes upon the cross."

### HIS MANNER IN SPEAKING

"His gesticulation was redundant, never commonplace, strictly *sui generis*, far from being awkward, not precisely graceful, and yet it could hardly have been more forcible, and, so to speak, illustrative. He threw himself into a great variety of attitudes, and evidently unpremeditated. Now he stands bolt upright, like a grenadier. Then he assumes the port and bearing of a pugilist. Now he holds his arms upon his breast, utters some beautiful sentiment, relaxes them, recedes a step, and gives his wing the corruscations of his fancy, while a winning smile plays over his countenance. Then he stands at ease, and relates an anecdote with the rollicking air of a horse-jockey at a Donneybrook fair. Quick as thought, his indignation is kindled, and, before speaking a word, he makes a violent sweep with his arm, seizes his wig as if he would tear it in pieces, adjusts it to its place, throws his body into the attitude of a gladiator, and pours out a flood of rebuke and denunciation."

—*Wm. Matthews, "Oratory and Orators,"* 297-8.

### JUDGE DIDN'T APPREHEND HIM

"When O'Connell, while conducting a case before Lord Norbury, observed, 'Pardon, my lord, I am afraid your lordship does not apprehend me,' the Chief Justice (alluding to a report that O'Connell had avoided a duel with Sir Robert Peel, by surrendering himself to the police) retorted, 'Pardon me also; no one is more easily apprehended than O'Connell, whenever he wishes to be apprehended.' "

—*Heard's Curiosities of the Law*, p. 54; also *Hamilton's Life of O'Connell*, 55.



## GRATTAN COMPARED TO HIMSELF

"Grattan sat by the cradle of his country, and followed her hearse; it was left for me to sound the resurrection trumpet, and to show that she was not dead, but sleeping."—*Said by O'Connell.*

## THE DUKE OF WELLINGTON

"The Duke of Wellington is a stunted corporal."

## AN OPPONENT

"He is a mighty big liar, a lineal descendant of the impenitent thief; or a titled buffoon; or a contumelious cur; or a pig, or a scorpion, or an indescribable wretch."

## AN ACT OF PARLIAMENT

"I can drive a coach and six through any act of Parliament."  
—*Alluding to the loose construction of the language.*

## A CATHOLIC, BUT NOT A PAPIST

"I am a Catholic, but not a Papist."

## CARLYLE ON O'CONNELL

"Thos. Carlyle never liked O'Connell, whom he heard in 1848, when on a visit to Ireland, and he characterized him as 'a lying scoundrel, the Demosthenes of blarney; a master of Irish balderdash.'"

## NOT A DEMAGOGUE

"He has been called a demagogue. If by a demagogue is understood a man who is merely an adept in mob-oratory, whose life is spent in pandering to the passions of the populace, in following and interpreting their follies, and in advocating the extreme opinions they delight in, it is quite true that such a character is a contemptible one, but equally true that it does not apply to O'Connell. The truth is, that the position of O'Connell, so far from being a common one, is absolutely unique in history. There have been many greater men, but there is no one with whom he compares disadvantageously, for he stands alone in his sphere. We may search in vain through the records of the past for a man who, without the effusion of a drop of blood, or the advantages of office or rank, succeeded in governing a people so absolutely and so long. And creating so entirely the elements of his power. A king without rebellion, with his tribute, his government, and his deputies, he at once evaded the meshes of the law and restrained the passions of the people. He possessed also the eloquence and the adroitness of a demagogue, but he possessed also the sagacity of a statesman and not a little of the independence of a patriot."—*Leckey's "Leaders of Public Opinion in Ireland," 298.*

## AS A LAWYER

"There have been a few lawyers of deeper knowledge, and even of more powerful eloquence, though he ranked extremely high in both respects; but never, perhaps, was there a man more admirably calculated to excel at the Irish bar. His unrivalled knowledge of the Irish character; his sagacity in detecting the weaknesses of the judges, jurymen and witnesses;



the wonderful dexterity with which he could avail himself of any legal quibble or ambiguity; and the unblushing audacity with which he could confront an opponent, enabled him quickly to distance all competitors. \* \* \* The principal success of O'Connell at the Bar was, not in oratory, but in cross-examining. His wonderful insight into character, and tact in managing different temperaments, enabled him to unravel the intricacies of deceit with a rapidity and a certainty that seemed miraculous."—*Lecky's "Leaders of Public Opinion," etc., 231-4.*

### HIS ORATORY

"Had O'Connell been a man of second-rate talent he would have imitated some of the great orators who adorned the Irish Parliament; he would have studied epigram like Grattan, or irony like Plunket, or polished declamation like Curran. \* \* \* He possessed a voice of almost unexampled perfection. Rising from an easy and melodious swell, it filled the largest building and triumphed over the wildest tumult, while at the same time it conveyed every inflection of feeling with the most delicate flexibility."—*Lecky's "Leaders of Public Opinion," etc., 238.*

### THREE IMPORTANT MEASURES

"Perhaps the three most important Parliamentary measures of the present century are the Emancipation of the Catholics, the Reform Bill of 1832, and the Establishment of Free Trade in Corn. The first was chiefly due to O'Connell. On one of the most important divisions in the first Parliament of William IV, his followers turned the balance in favor of the second. He was an early and strenuous advocate of the third."—*Lecky's "Leaders of Public Opinion," etc., 278.*

### WHAT HE DID FOR IRELAND

"He emancipated Ireland in 1829 from the leadership of the landlords, but failed in his movements for repeal, which would have given Ireland local self-government. But no man ever retained so commanding a position in Ireland for nearly so long a period. For five and thirty years he was so much the first man of his country, that in the eyes of the world he stood for Ireland. \* \* \* If Peel was pre-eminent as a member of Parliament, O'Connell was one of the greatest men of business. He was, indeed, a man with the defects of his qualities, impulsive, pugnacious, masterful. But he was, too, a man, of whom Ireland and the United Kingdom have cause to be proud; great as an orator, great as a politician, and, as a man, amiable and upright. It was his fate to have little scope for the statesmanship of constructive policy; to find his great success balanced by great failure; to die with so dark a cloud hanging over the country (famine in Ireland) he loved so well. But he served her well and he still lives in her affection, and this is his best reward."

—*Hamilton's Life of O'Connell, 218-19.*

### NEVER SACRIFICED VERDICT TO ORATORY

"Ah, a speech is a fine thing, but the verdict is the great thing."

### SPEECHES UNPREPARED

"I never write out any discourse beforehand, nor could I do it without utterly cramping the force and nerve of the very limited talent I possess."

—*Extract from letter refusing to defend the "Lyons' Conspirators," in Paris, 1835, because, though he could speak French, said not fluently enough.*—*Hamilton's Life, 202.*



## LUSTY THOUGHTS

"O'Connell brings forth a brood of lusty thoughts without a rag to cover them."—*Said Richard Shiel.*

## GRATTAN ON HIS STYLE AND THOUGHT

"His speaking is extravagant diction. \* \* \* His liberty is not liberal, his politics are not reason, his reason is not learning, his learning is not knowledge; his rhetoric is a gaudy hyperbole, garnished with faded flowers, such as a drabbed girl would pick up in Covent Garden, stuck in with the taste of a kitchen-maid. He makes politics a trade, and even when the filthy slaverer has exhausted its poison and returns to its kennel, it there still howls and barks within unseen." To the Catholics of Ireland, speaking of writing of the "Securities" Controversy.—*Hamilton's Life*, 210.

## COMMITTER OF CRIME, HELPS ENEMY

"Remember he that commits crime helps the enemy."

## THE PEASANTS HIS INSTRUMENT

"I will forge these four millions of Irish hearts into a thunder-bolt which shall suffice to dash this despotism to pieces."

## TRUTH

"The whole truth can never do harm to the whole of virtue."

## POLITICS AND MORALS

"Nothing is politically right which is morally wrong."

## AGAINST SLAVERY IN AMERICA

"I send my voice across the Atlantic, careering like the thunder-storm against the breeze, to tell the slave holders of the Carolinas that God's thunderbolts are hot, and to remind the bondman that the dawn of his redemption is already breaking." Said Wendell Phillips, who heard this sentence, "You seemed to hear the tones come echoing back to London from the Rocky Mountains."

## WENDELL PHILLIPS ON O'CONNELL

"The cause of constitutional government owes more to O'Connell than to any other political leader of the last two centuries. The English-speaking race, to find his equal among its statesmen, must pass by Chatham and Walpole, and go back to Oliver Cromwell, or the able men who held the throne of Queen Elizabeth. I am ready to affirm that he was, all things considered, the greatest man the Irish race ever produced. A gentleman from Boston went to him with a letter of introduction, which he sent up to him at his house in Merrion Square. O'Connell came down to the door, as was his wont, put out his hands, and drew him into his library. 'I am glad to see you,' said he, 'I am always glad to see anybody from Massachusetts, a free State.' 'But,' said his guest, 'this is slavery you allude to Mr. O'Connell? I would like to say a word to you in justification of that institution.' 'Very well, sir, free speech in this house; say anything you please. But before you begin to defend a man's right to own his brother, allow me to step out and lock up my spoons.'



I remember the solemnity of Webster, the grace of Everett, the rhetoric of Choate; I know eloquence that lay hid in the iron logic of Calhoun; I have melted beneath the magnetism of Sergeant S. Prentiss, of Mississippi, who wielded a power few men ever had. It has been my good fortune to sit at the feet of the great speakers of the English tongue on the other side of the ocean. But I think all of them together never surpassed, and none of them ever equaled O'Connell. I saw him at over sixty-six years of age, every attitude was beauty, every gesture, grace. You could only think of a grayhound as you looked at him; it would have been delicious to have watched him, if he had not spoken a word. Then he had a voice that covered the gamut. The majesty of his indignation, fitly uttered in tones of superhuman power, made him able to 'indict' a nation, in spite of Burke's protest.

"Bulwer was led to compose the following lines on his eloquence:

" 'Once to my sight that giant form was given,  
 Walled by wide air, and roofed by beamless heaven.  
 Beneath his feet the human ocean lay,  
 And wave on wave rolled into space away.  
 Methought no clarion could have sent its sound  
 Even to the center of the hosts around;  
 And, as I thought, rose the sonorous swell,  
 As from some church-tower swings the silvery bell,  
 Aloft and clear, from airy tide to tide  
 It glided, easy as a bird may glide;  
 Even to the verge of that vast audience sent,  
 It played with each wild passion as it went,  
 Now stirred the uproar, now the murmur stilled,  
 And sobs or laughter answered as it willed.' "

—*From Wendell Phillips' lecture on O'Connell.*

#### ANECDOTE OF HIS STANDING AT 54

"In 1829, when O'Connell, then fifty-four, was resting at Darrynane the 'Donraile Conspiracy' was on for trial. A first batch was tried by a special commission at Cork, consisting of Baron Pennefather and Mr. Justice Torrens. Dogherty, the Solicitor-General, was for the prosecutors. This was the year after the innocent conflict which won the Emancipation battle, and O'Connell had declined to defend the prisoners. The first four were convicted. Their friends were filled with panic: in such a result they had been unable to believe. O'Connell, and O'Connell alone, could save the rest. A farmer named William Burke was dispatched posthaste to Darrynane, ninety miles away. Traveling to Kerry was still slow and difficult. The first four-horse mail from Cork into Kerry had only been run in August, 1810; the Limerick mail-coach was a thing of but four years' standing. About thirty years before, O'Connell had been four days in getting from Darrynane to Limerick, and until 1839 there was a portion of the road to Darrynane, five miles long, so insecure the rough conveyances of the country dragged with ropes by men. Burke arrived early on a Sunday morning, and told O'Connell his tale. The counsellor said he would come to the rescue. With only two hours' rest, Burke set out again for Cork, to prepare relays of horses along the road, and raise the spirits of the prisoners and their friends. O'Connell set off and drove himself in a chaise all that day and all the night. At Macroom he snatched three or four hours' sleep, and at daybreak he pushed on. The court was to sit at nine; the judges had refused to delay the trial for O'Connell's arrival. All Cork was grieving with anxiety; would the counsellor be there in time? At length the watchers descried him dashing along the Kerry road and lashing his horse as he came. The cheer that went up from thousands of throats



broke in upon the Solicitor-General's opening speech. Pushing through the crowd, O'Connell pulled up at the court; his horse fell dead in the shafts. As he entered the court, Dogherty turned white, and the prisoners dared to hope. Apologizing to the bench, O'Connell took his seat, and snatching a hasty breakfast of milk and bread as he sat in his place, plunged into the case. The Crown witnesses were not prepared to face him. He browbeat the Solicitor-General, mimicked his pronunciation, and sneered at his law. Though the evidence was the same as that which had convicted the first batch, the jury, under the influence of O'Connell's ascendancy, disagreed as to the second, and acquitted the third. No wonder that he lived in the hearts of the Munster men, who had so often seen their friends and relatives saved by his skill. The Irish peasants, who gave to O'Connell through a quarter of a century an affection and obedience which they have never given to any other leader, always loved better than all his titles the name of 'The Counsellor.' "

—*Hamilton's "Life of O'Connell,"* 4-16.

### REPORT TO BARON McCLELLAN

"During the motion for a new trial, counsel called on a young lawyer of Kerry, who was attorney on the other side, to produce some document or make some admission. O'Connell, who chanced to be in court, but for aught that appeared, knew nothing whatever of the rights or wrongs of the case, and had nothing to do with it, stood up in court and told the attorney to refuse. Baron McClellan, one of the Judges on the bench, asked him if he had a brief in the case. 'No, my lord,' said O'Connell, 'I have not, but I will have when the case goes down to the assizes.' 'When I was at the bar,' said the Judge, 'it was not my habit to anticipate briefs.' 'When you were at the bar,' retorted O'Connell, 'I never chose you for a model, and now that you are on the bench, I shall not submit to your dictation.' "—*Hamilton's Life of O'Connell,* 18, 19.

### ON REPEAL OF THE UNION

"We are standing upon Tara of the Kings; that spot where the monarchs of Ireland were elected, and where the chieftains of Ireland bound themselves by the most solemn pledges of honor to protect their native land against the Dane and every stranger. This was emphatically the spot from which emanated every social power and legal authority by which the force of the entire country was concentrated for the purposes of national defense. On this spot I have a most important duty to perform. I here protest, and in the name of my country and in the name of my God, against the unfounded and unjust Union. My proposition to Ireland is that the Union is not binding on her people. It is void in conscience and in principle, and as a matter of constitutional law I attest these facts. Yes, I attest by everything that is sacred, without being profane, the truth of my assertions. There is no real union between the two countries, and my proposition is that there was no authority given to anyone to pass the Act of Union. Neither the English nor the Irish Legislature was competent to pass that act, and I arraign it on these grounds. One authority alone could make that Act binding, and that was the voice of the people of Ireland. The Irish Parliament was elected to make laws, and not to make Legislatures; and, therefore, it had no right to assume the authority to pass the Act of Union. The Irish Parliament was elected by the Irish people as their trustees; the people were their masters, and the members were their servants, and had no right to transfer the property to any other power of legislation to the French Chamber, would any man assert that the Act was valid? Would any man be insane enough to assert it, and would the insanity of the assertion be mitigated by sending any member or members to the French Chamber?



Everybody must admit that it would not. What care I for France? And I care as little for England as for France, for both countries are foreign to me. The very highest authority in England has proclaimed us to be aliens in blood, in religion, and in language. To show the invalidity of the Union, I will only quote the declaration of Lord Plunket in the Irish Parliament, who told them that they had no authority to transfer the legislation of the country to other hands. As well, said he, might a maniac imagine that the blow by which he destroys his wretched body annihilated his immortal soul, as you imagine that you can annihilate the soul of Ireland, her constitutional rights.

"I, therefore, proclaim the nullity of the Union. In the face of Europe I proclaim its nullity. In the face of France and of Spain, I proclaim its nullity; and I proclaim its nullity in the face of the liberated States of America. I go farther, I proclaim its nullity on the grounds of the iniquitous means by which it was carried. It was effected by the most flagrant fraud. A rebellion might have a pretext for crushing the liberties of Ireland. There Ireland had no legal protection. The habeas corpus act was suspended and the lives and liberties of the people were at the mercy of martial law. The next fraud was that the Irish people were not allowed to meet to remonstrate against it. In King's County the High Sheriff called the people together in the court-house and Colonel Connor, of the North Cork militia, supported the artillery and a troop of horse entered the court-house at the head of two hundred of his regiment, and turned out the sheriff, magistrates, grand-jurors, and freeholders assembled to petition against the enactment of the Union.

"In Tipperary a similar scene took place, a meeting convened by the High Sheriff was dispersed at the point of the bayonet. Thus public sentiment was stifled; and if there was a compact, as is alleged, it is void, on account of the fraud and force by which it was carried.

"My next impeachment against the Union is the gross corruption with which it was carried, no less than 1,275,000 pounds was spent upon the rotten boroughs, and 2,000,000 given in direct bribery. There was not one office that was not made instrumental to the carrying of the measure. Six to seven judges were raised to the bench for the votes they gave in its support; and no less than twelve bishops were elevated to the Episcopal bench for having taken the side of the Union; for corruption then spared nothing to effect its purpose, corruption was never carried so far; and if this is to be binding on the Irish nation there is no use in honesty at all.

"My next impeachment of the Union is its destructive and deleterious effect upon the industry and prosperity of the country. The County of Meath was once studded with noble residences. What is it now? You remember the once prosperous linen-weavers of Meath. There is scarcely a penny paid to them now. In short, the Union struck down the manufacturers of Ireland. The Commissioners of the Poor Law prove that 120,000 persons in Ireland are in a state of destruction during the greater part of each year. How is it that in one of the most fertile countries of the world this should occur? But the Union is more a nullity on ecclesiastical grounds; for why should the great majority of the people of Ireland pay for the support of a religion which they do not believe to be true? The Union was carried by the most abominable corruption and bribery, by financial robbery on an extensive scale, which makes it the more heinous and oppressive; and the result is that Ireland is saddled with an unjust debt, her commerce is taken from her, her trade is destroyed, and a large number of her people are thus reduced to misery and distress.

"On the 2nd of January last I called this the Repeal year, I was laughed at for doing so. Are they laughing now? No; it is now my turn to laugh; and I will now say that in twelve months we will have our Parliament again on College Green. The Green has the undoubted prerogative at any time to order her ministers to issue writs, which being signed by the



Lord Chancellor, the Irish Parliament would at once be convened without the necessity of applying to the English Legislature to repeal what they appear to consider a valid Act of Union. And if Sugden would not sign the writ, an Irish Chancellor would soon be found who would do so. And, if we have our Parliament again in Dublin, is there, I would ask, a coward amongst you who would not rather die than allow it to be taken away by an Act of Union? Let every man who would not let the Act of Union to pass hold up his hand. When the Irish Parliament is again assembled, I will defy any power on earth to take it from us again. Your shouts are almost enough to call to life those who rest in the grave. I can almost fancy the spirits of the mighty dead hovering over you, and the ancient kings and chiefs of Ireland from the clouds listening to the shouts sent up from Tara for Irish liberty! Your cheers will penetrate to the extremity of civilization. Our movement is the admiration of the world, for no other country can show so much force with so much propriety of conduct. No other country can show a people assembled for the highest national purposes than can actuate man; can show hundreds of thousands able in strength to carry any battle that ever was fought, and yet separating with the tranquility of school-boys. You have stood by me long; stand by me a little longer, and Ireland will be again a Nation!"

—*This speech was probably made to the largest political gathering in the history of the world, on the Hill of Tara, Aug. 15, 1843. It is estimated that not less than a quarter of a million persons were present. They came from all parts of Ireland, under the guidance of their parish priests, to hear the great orator.*

### DISLIKED SIR ROBERT PEEL

O'Connell disliked Sir Robert Peel. because of the latter's opposition to his taking a seat in Parliament, and said that "Peel's smile was like the silver plate on a coffin."

### EARLY PRECOCITY

"Young O'Connell learned the whole alphabet in an hour and a half. He would turn over the portraits of the celebrities of the Dublin Magazine, saying, 'I wonder will my visage ever appear in the Dublin Magazine?' He composed a drama on the fortunes of the House of Stuart at ten years of age; and so fond of reading was he, that he would desert his play-fellows to devour Cook's 'Voyages,' and cry over its pages of adventure."

—*Hamilton's Life*, 3.

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### JUSTICE GRIER ON SPECIAL PLEADING

"This system, matured by the wisdom of ages, founded on principles of truth and sound reason, has been ruthlessly abolished in many of our States, which have rashly substituted in its place the suggestions of sciolists who invent new codes and systems of pleading to order. But this attempt to abolish all species and establish a single genus, is found to be beyond the power of legislative omnipotence. The result of these experiments, so far as they have come to our knowledge, has been to destroy the certainty and simplicity of all pleadings, and introduce on the record an endless wrangle in writing, perplexing to the court delaying, and impeding the administration of justice."

—*McFaul v. Ramsey*, 20 Howard, 525 (In U. S. Supreme Court).



## CHARLES O'CONOR (1804-1884), New York

### JURISPRUDENCE AND JUSTICE

"Jurisprudence is of human origin; Justice is an attribute of Divinity, pre-existent of all created things, eternal and immutable. Its authority is not derived from any human code, either of positive institution or of customary reception; its decrees are found in the voice of God speaking to the heart which faith has purified to receive and reason, has enlightened with capacity to understand."

—*Chas. O'Conor—Armstrong v. U. S. in Court of Claims, Washington, D. C., '55.*

### A GREAT LAWYER

"The great lawyer is not the one who knows the most law, but understands what the point involved is. I have known many cases to go to the Court of Appeals where neither party knew what the real point was."

—*Chas. O'Conor.*

It was the opinion of S. J. Tilden, Jno. K. Porter, John Bigelow, Jas. C. Carter, Wm. M. Evarts, Chas. P. Daley, Henry E. Gregory, H. L. Clinton, and Frederic R. Coudert that O'Conor was the greatest lawyer this country has ever produced, and some of them that he was the greatest produced in any country.

### ADMIRALTY JURISDICTION

"That admiralty jurisdiction could exist without the tide-water was an idea too novel for even the great mind of Chief Justice Marshall, but at last judicial wisdom, sharpened and impelled by strong necessity, cast aside these immaterial incidents, and, looking at the substance of the thing, found in the Constitution a government for our great rivers and inland seas."—*Chas. O'Conor (1804-1884), N. Y.*

### SUCCESS—UPON WHAT IT DEPENDS

Being asked to what he chiefly attributed his success he answered, "Study."

### SOME INCIDENTS OF HIS EARLY CAREER

"O'Conor read Blackstone at thirteen years of age; tried cases in the Ward Courts of New York City, at eighteen; bought an old law library for \$161, by getting his friend, George Pardow, to indorse his note (for which he remembered Pardow's greatgranddaughter in his will more than fifty years afterward, by giving her 1-3 of his estate, amounting to \$33,333,33, and also his Nantucket home, and his library there,—18,000 volumes); was admitted to the Supreme Court, and Court of Chancery at twenty-three. Said he owed most to Comyn's Digest of the Laws of England, in 5 volumes, which by close study he made his own—really the most accurate abridgment of the common law that has ever been written."

—*13 Magazine of Am. Hist., 522, by Chas. P. Daly, 1885.*



## MADE PATHETIC APPEALS BY PROXY

O'Connor used to say that he never could make pathetic appeals to the jury, even in cases where he felt most deeply; and where this was requisite he generally retained Ogden Hoffman, or some other eloquent advocate.

## O'CONNOR AND NICHOLAS HILL

"After the Court of Appeals came into existence in 1847, Nicholas Hill and Charles O'Connor were the two lawyers heard most frequently there in the argument of important cases. One of the judges was asked whose briefs he regarded the best, and his reply was that Hill's were the fullest and most exhaustive, but O'Connor's were the clearest. Hill was asked what he thought of O'Connor's arguments before the court generally, and he said O'Connor does not argue his cases, he states them; which being communicated to Mr. O'Connor, he expressed himself highly gratified by this appreciative compliment."

—*Chas. P. Daly—in 13 Am. Mag., 529.*

## HIS PRACTICE AND CASES

"His practice extended over a half century. The cases which he selected (out of the various ones), and had bound and left by his will, to the Law Institute, alone fill 79 volumes, octavo, to which should be added 7 volumes of written opinions; and yet these 86 volumes extended only from 1849, which is a little more than half of his professional career."

—*Chas. P. Daly—Idem, 530.*

## A GENERAL LAWYER

"The question then arises, how was it that with such competitors as Ogden Hoffman, Hugh Maxwell, John Duer, Jas. W. Gerard, Thos. A. Emmet, Benj. F. Butler, Henry M. Western, David Graham and Jas T. Brady—all great *nisi prius* lawyers; Caleb Riggs to Ralph Lockwood, exclusive equity lawyers; Samuel A. Talcot, David B. Ogden and George Wood, unequaled in argument before the court in banc—how was it that he reached so high a position, and kept it so long? The answer is, that his course of training had been such that he became more of a general lawyer than any of his contemporaries. His business had been from the first of a diversified character; and as it had been his habit to investigate with the greatest thoroughness every case that came before him, and the law relating to it, he became well informed and skillful in more departments of the law than most lawyers. In fact, from the time he commenced to try causes in the Ward Courts he may be said to have studied the law, not by the reading of the treatises, but by learning what was applicable to the cases he had in hand; and as he had great powers of application and a most tenacious memory, he acquired and retained a great amount of knowledge in every department of jurisprudence."

—*Chas. P. Daly—Idem, 523-4.*

## HIS PURITY OF STYLE

"President Woolsey, of Yale College, who, after reaping the highest honors of that college, passed four years in Germany to complete his education, and was afterward made Professor of the Greek language, though famed for the purity of his style in its strength and foreshortening, was by no means the equal of O'Connor, who was confessedly without the advantages of a classical education (having received but six months,



tuition in a school at Barclay street, N. Y.; some instruction from his father, in Latin and other branches with which his father was acquainted, and subsequently some little instruction in French)."

—*W. Watson, vol. 161, N. A. Review, 758.*

### THE FORREST DIVORCE CASE FEE

"O'Connor got a decree against Forrest, the actor, for \$64,000, and charged his client, Mrs. Forrest, a fee of \$40,000, retaining it from the decree; but claimed a large part of this was for money advanced. The charge created quite a scandal, as a committee of thirty N. Y. ladies, upon his early success in 1852, presented him with a silver vase, for his disinterestedness, and sixty 'disinterested lawyers' gave him another vase for his meritorious and magnanimous prosecution of the actor; but when he made the \$40,000 charge, in 1876, upon the termination of the litigation, there was quite a scandal about the matter, and an investigation by a committee of the Bar, at his suggestion, however, and which he demanded, completely exonerated him from anything dishonorable in any way."—*Irving Brown.*

### \$50,000 FEE IN A MINE CASE

His fee in the Almaden Mine Case, in the U. S. Supreme Court, was \$50,000, in a check payable in gold (and as gold at this time was worth 250 premium, it amounted to \$125,000).

### NO PARTICULAR APTITUDE FOR LAW

O'Connor told John Bigelow that he possessed no particular aptitude for the law, and had no doubt that he would have met the same measure of success in any walk—as blacksmith, physician, or in any other calling.

### JAMES C. CARTER'S TRIBUTE

"He could have stepped into Westminster Hall and argued a special demurrer with success against Sergeant Williams."

### WILLIAM M. EVARTS' ESTIMATE

"He was, in my judgment and to my perception, the most accomplished lawyer in the learning of the profession of our Bar. Indeed, I cannot be mistaken in saying that he was entitled to pre-eminence in this province of learning among his contemporaries in this country, and among the most learned of the lawyers of any country under our system of jurisprudence."

### JOHN BIGELOW'S ESTIMATE

"O'Connor was one of the most richly endowed barristers of this or, indeed, of any age."—1 "*Retrospections of An Active Life,*" 78.

### JOHN K. PORTER'S OPINION

John K. Porter regarded Alexander Hamilton, Nicholas Hill and Charles O'Connor as the greatest lawyers, not only of the New York Bar, but of the United States.



## HIS AMBITION

"O'Connor's main purpose, it seems, was to attain to the highest eminence in his profession, and to prove that the son of a foreigner, without social position, could equal and surpass the men who had all the derived and fictitious advantages denied to him."

—5 "*Great Am. Lawyers*," 115-16.

## NOT GENERALLY CULTURED

"Whether Mr. O'Connor's distinction as a jurist and his usefulness as a public character might not have been increased had he received a classical or a university education, and throughout his career given more time to general culture, is a question that may not unnaturally be asked. It is safe to say, however, that such an education and pursuit of culture would not have enlarged or multiplied his qualifications simply and solely as a lawyer. A deeper knowledge of history, literature, and philosophy, which by some authorities has been deemed prerequisite, and even indispensable to the equipment of the truly great lawyer and jurist, would not have increased his ability to conduct trials and win cases. But such studies, while they might not have strengthened, would have liberalized his understanding and extended his intellectual horizon. They would have opened to him domains of opulence and beauty into which he was destined never to enter. He might have found more genuine satisfaction in his leisure hours, more refreshment and consolation, had he been able in the decline of life to renew an acquaintance with the master spirits of literature and philosophy."

—5 "*Great American Lawyers*," by Henry Ellsworth Gregory, 115-16.

## HABITS

He always retired at 9 in the evening, breakfasted at 7, dined at 2, and suppered at 7. To this program he adhered with almost fanatical precision.—*John Bigelow*—"29 Century Magazine" (1884-5), 726.

## GREAT SPECIAL PLEADER

"O'Connor considered himself a very expert special pleader; he doubted if he had his superior in the country; he knew almost by heart every line in Chitty's elaborate treatise on 'Pleading;' and in speaking of a certain suit in which his aid had been invoked, he said he never knew a case in which the parties had been pleading for an issue a year that he could not find a defect of sufficient gravity to set their proceedings aside. He thought, however, that the time of a young lawyer could now be better employed than in trying to master the literature and art of special pleading."—*John Bigelow*—29 Cent. Mag., 732-3.

## HIS FEES

"He was noted always for his moderate charges, though his income was large. It was not his habit to ask retaining fees, nor any pay on account until the work was done, then receiving all in a lump. He did not regard this the most profitable, nor did he commend it to others; but it was somehow more to his taste. He worked in litigated cases sometimes for twenty years before receiving a cent of compensation. Usually fixed the price at the close, and told his clients that while he thought the sum named was what his services were worth, yet they might give him what they thought right, or felt they could afford. Said he never had his bill cut down but once, and that was by a very prominent citizen of N. Y. City. The bill was \$1,000—a very moderate charge, considering the services rendered. The client sent him \$750, with the remark that he thought that was about the sum he expected."—*John Bigelow*—29 Cent. Mag., 734.



## HIS CHARITY

"He gave an impecunious man, then living in N. Y., but a native of Virginia, \$5 while standing in front of Delmonico's. It was such a surprise to the poor fellow, who was on the verge of suicide, that he asked who the stranger was. He was told he was Charles O'Connor, the lawyer. Thirty years afterward when in his retired home at Nantucket, O'Connor received a check for \$5, and a letter, which said as soon as able the sender would remit the interest for the thirty years. But the lawyer immediately wrote him that he had no recollection of the incident; that he would accept the money, for that would seem necessary to make him feel easy, but he must decline the interest and begged him never to allude to, or think of that again, as he never could, under any circumstances, consent to accept it.

"Again, while on his way to New York from his Nantucket home, says Miss Folger, who accompanied him, we had to wait some time at the Providence depot. I suggested that we should give some sandwiches we had brought with us to some children also waiting. He was delighted, and insisted that I should buy some oranges to add to the attractions of the repast. We went into the waiting-room, spread out our things on one of the settees, and then invited the little ones to the feast. I cannot tell you his delight at their enjoyment and appetite, and he watched them until all the eatables had vanished, pacing up and down the length of the room meanwhile."—*John Bigelow's Recollections of O'Connor.*

## HIS WEALTH

"O'Connor's fortune has been estimated by those in a position to know at \$800,000. He owned 11 acres of land, with his town house, on Washington Heights, worth from \$300,000 to \$400,000, and he once owned a house in Fifth Avenue, N. Y. City. His library of 18,000 volumes at Nantucket is said to have cost him \$100,000, but it sold at auction sale at less than \$30,000.—*Irving Browne—7 Green Bag, 352.*

## FREDERICK R. COUDERT'S ESTIMATE

"Asked who was the greatest lawyer he had ever known, Coudert replied: 'Charles O'Connor, Ogden Hoffman and Jas. T. Brady, each greatest in a certain sphere. O'Connor was greatest in a knowledge of the law, but he always kept a tight rein on his imagination. Hoffman was irresistible with a jury. Brady the most richly endowed of them all, but the impression he left was that he could do anything, if he only cared to try.'

## A GREAT REASONER

"Charles O'Connor had no more imagination or emotion than a problem in Euclid's geometry; but, as in Euclid, if you granted his premises you could not escape his conclusions. His direct examination was so clear and orderly that the essentials of the witnesses's story remained with the jury until the end of the trial, and the cross-examination was so keen and searching that a lying or prevaricating witness rarely escaped detection and confusion."

—*Said by Abbott, when practicing in N. Y. City, from 1853 to 1859. He further said Brady and O'Connor were the leaders at the bar in jury trials.*

## OUT-GENERALED BY JAS. W. GERARD

"Gerard and O'Connor were opposed in an important case, in which the plaintiff claimed heavy damages on the ground of fraud in a business transaction between him and the defendant. O'Connor was for plaintiff;



Gerard for the defendant. Fraud could only be proved by a variety of facts and circumstances, any one of which itself was probably not very strong, but combined it was claimed would prove an overwhelming case. Lawyers accustomed to try cases of fraud understand how the force and weight of the circumstances depend upon the impressive manner in which they are brought out in evidence before the jury. Objection is often made to the admission of the evidence; the bearing of each circumstance is not unfrequently discussed by opposing counsel, and its relevancy has to be shown before it can be admitted. In this way the jury become interested and get educated in regard to the plaintiff's case as the trial proceeds, and the various facts and circumstances, as they are brought out in detail, continue to increase in importance until their combined force, when plaintiff rests, is sufficient to prove his case. In the case in question, when O'Connor produced his first witness and began to examine him, Mr. Gerard, in his peculiar, quick, nervous manner, arose and said: 'Mr. O'Connor, what do you propose to show by this witness?' Mr. O'Connor stated what he proposed to prove. Mr. Gerard said: 'It is useless to waste the time of the court and jury in proving that, *I admit it.*' Mr. O'Connor called his next witness and began to examine him. Mr. Gerard, in the same manner as before, jumped up and asked, O'Connor the same question—what he proposed to show by the witness. Mr. O'Connor, in his peculiar, clear and succinct manner, stated precisely what he expected to prove. Said Mr. Gerard—'*I admit it, don't let us waste time.*' Mr. O'Connor called his next witness, Mr. Gerard put to him the same question, and Mr. O'Connor, with his usual clearness and accuracy, stated the facts he expected to prove. Said Mr. Gerard: 'I admit all you say you are going to prove. Let us hurry along.' In this way, Mr. Gerard, as plaintiff's witnesses, one after another were called, admitted everything that was sought to be proved by them. With a rapidity that almost took Mr. O'Connor's breath away he found that his whole case was admitted—all his facts, which by dint of determined perseverance and great professional skill he had expected to get in evidence, were admitted wholesale. He, therefore, rested his case; and as Mr. Gerard had no evidence to give in behalf of his client, the case went to the jury on the evidence of the plaintiff. Of course, it was for the jury to construe the facts and circumstances, and determine whether they proved the fraud charged upon the defendant. Mr. Gerard instantly addressed the jury. His speech was very short, and was substantially as follows:—

"Gentlemen of the jury, some of you know me personally. I have no doubt those of you who are not personally acquainted with me know me by reputation. Now, gentlemen, you *know* that if my client had been guilty of any fraud I would be the last man on earth to admit it. I would hide it from you, I would cover it up; I would fight, fight—and I know *how* to fight—against the proof of it getting in evidence. If my client had been guilty of fraud, do you think I would admit it? No! No! Never! Never!! Never!!! (Mr. Gerard here looked at his watch.) Gentlemen, excuse my brevity; I have an engagement to dine to-day, and my time is almost up, so I will detain you no longer."

Despite the able and elaborate argument of Mr. O'Connor to the jury he failed to impress them with the *importance* of the facts and circumstances, which, through Mr. Gerard's admissions, he had got in evidence, and without hesitation they rendered a verdict for the defendant."

—Henry L. Clinton—in "*Extraordinary Cases*," 78-80.

## CONSCIENCE AND NATURAL LAW

"What is contrary to conscience and contrary to that natural justice, with a knowledge whereof the great Father of us all has endowed every



reasonable and intelligent member of our species, may not lawfully be practiced, however, sanctioned by human institutions. I hold to that doctrine, and in that sense I do maintain that there is a higher law—I vow undying allegiance.”

—O’Conor, in *Lemmon v. the People*, 20 N. Y. Rep. (1852)

### EXPERIENCE WITH AN INDIANA RAILWAY

“O’Conor loaned a friend \$25,000, secured by Indiana railroad bonds. He sent his claim to an Indianapolis law firm for collection. They reported the security was no good, and advised settlement at a large discount, which the railroad company would pay. He wrote: ‘Sue the railroad company. Put it into judgment.’ They answered that the mortgage had been foreclosed, and the road sold for a song. O’Conor insisted upon putting the matter into judgment. They again wrote: ‘We can negotiate the bonds to officers of the company rather than have a suit, perhaps we can compromise it.’ He wrote back that he would have principal and interest or he would go West and commence suit. Shortly he received the full amount of his claim, with interest and costs. The company, doubtless, had heard of the great fighting lawyer’s staying qualities.”—*Scott’s ‘Distinguished Lawyers,’* 550

### O’CONOR’S TRIBUTE TO TILDEN

“O’Conor spoke of the case in which Giles, the Know-Nothing candidate for comptroller, attempted to set aside the election of Flagg, the incumbent in the year 1854. Tilden and Evarts were associated with O’Conor as counsel for Flagg, and James T. Brady, Ambrose L. Jordan, Judge Edmonds and two others, whose names were not mentioned, were counsel for Giles. But, said he, the case was won by Tilden. Giles had proved his case, and proved it completely. Then Tilden rose to open for Flagg. He had not a witness to produce that could testify to the merits of the case. Tilden spoke some time before his line of defense began to appear, the audience began to yawn and those especially interested for Flagg, to despair. After he had spoken some half hour or more, the clouds began to lift and the sunlight to appear. Within two minutes after the audience had struck his trail they were still as mice, and their attention was riveted upon him until he took his seat. He had been up all night preparing a series of tables from the talley-list which had been lost or stolen, and was thus enabled to follow, step by step, the march of his inexorable logic. Mr. O’Conor described the speech as ‘exquisite’. ‘It was perfect; it was as fine an argument as I ever heard.’ When Tilden sat down, the case was won. Evarts and I said a few words, but Flagg was comptroller when Tilden finished, and nothing that any one could have said would have made him more or less so.”

—*John Bigelow*—“29 Cent. Mag.,” 733.

### DUTY OF DEFENSE

“To afford even those whom impartial justice arraigns, upon credible evidence, a fair hearing is the first duty of our profession.” (In a letter when charged with defending high-handed criminals.)

### O’CONOR’S ADVICE ON READING

A young man sent O’Conor a large list of books which he had read, and asked the great lawyer what others he would advise him to read. O’Conor, who had never read, or even heard of many of the books in the list, wrote his inquirer: “Read less and think more.”



## THE CATHOLIC RELIGION

"So far from being an advantage, the reputation of being an Irishman and a Catholic has been to me a serious political, social and professional disadvantage."

## SHAVE ME IN SILENCE

When asked how he would like to be shaved by a talkative barber, O'Connor replied: "In silence!"

## MIGHT BE CONVICTED FOR LESS MONEY

Conkling asked O'Connor what he thought of the reasonableness of a \$600 fee for trying a case in the lower court, taken to the Supreme Court, where he was beaten, and then to the N. Y. Court of Appeals, where he was finally beaten again—all of which consumed two years of time, and said Conkling, "when I gave my client a bill for \$600, he thought it too much. What do you think?"

"Well," said O'Connor, "I think he could have been convicted for less money."

## JAS. C. CARTER'S CHARACTERIZATION OF O'CONOR

"I believe it would be the deliberate judgment of those who have enjoyed a close acquaintance with Mr. O'Connor and have frequently witnessed his various powers in their full activity and observed the prodigious extent of his acquirements, that he was, all things considered, the profoundest and best equipped lawyer that has ever appeared at this bar, and that he would not suffer in a comparison with the great lawyers of any nation or any time. Certainly we have never known anyone at all comparable with him as a draughtsman. His pleadings were beautiful examples of art, and in his later years, when he had more leisure, to draw a bill in equity or an answer was a genuine delight to him."

—5 *Great Am. Lawyers, Art., 'O'Connor,' 89, note.*

## EVARTS ON THE MAN WHO TALKED TO HIMSELF

"Mr. Evarts once told me when I was talking to him at his country place that an old man whom he pointed out, and who was sawing wood, was the most sensible philosopher in the neighborhood. Mr. Evarts said: 'He is always talking to himself, and I asked him why.' His answer was: 'I always talk to myself in preference to talking to anybody else, because I like to talk to a sensible man, and listen to a sensible man talk.' "—*Chauncey M. Depew's 'Memories of 80 Years,' 106.*

## LORD ELDON AND THE HANDSOME LADY

At one time Lord Eldon was walking arm-in-arm with a legal friend, through the corridors of the court house, and observing a very handsome lady just ahead, remarked, "What a handsome lady." The lady overhearing the same turned and replied, "What an excellent judge!"



## JAMES OTIS (1725-1783), Massachusetts

### WRITS OF ASSISTANCE

"May it please your honors, I was desired by one of the court to look at the books, and consider the question now before them concerning writs of assistance. \* \* \* I will, to my dying day, oppose with all the powers and faculties God has given me all such instruments of slavery on the one hand, and villainy on the other, as the writ of assistance is. It appears to me the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law book. \* \* \* Your honors will find in the old books concerning the office of a justice of the peace precedents of general warrants to search suspected houses. But in modern books, you will find only special warrants to search such and such houses, specially named, in which the complainant has before sworn that he suspects his goods are concealed; and will find it adjudged that special warrants only are legal. In the same manner I rely on it, that the writ prayed for in this petition, being general, is illegal. It is a power that places the liberty of every man in the hands of every petty officer. I say that I admit that special writs of assistance, to search special places, may be granted to certain persons on oath; but I deny that the writ now prayed for can be granted, for I beg leave to make some observations on the writ itself, before I proceed to the Acts of Parliament. It is universal, perpetual, servable in the daytime, and can be served, not only by deputies, but even by their menial servants. Now one of the most essential branches of English liberty is the freedom of one's house. A man's house is his castle; and while he is quiet, he is as well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege. Custom-house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and everything in their way, and whether they break through malice or revenge, no man, no court can inquire. This want of exercise of this power is not a chimerical suggestion of a heated brain." (Mr. Otis then continues to show liberty is man's natural, social, and trade right, and how this right had been wrought into the English Constitution—through the old Saxon laws, Magna Charta, and 50 confirmations of it in Parliament, and the executions ordained against the violators of it, down to the Jameses and Charleses, and the Petition of Right and the Bill of Rights, and the Revolution.)

Before the Supreme Court in Boston Feb., 1761. Says Bancroft in 3rd volume of his History of U. S., p. 422: "Otis was a man of many sorrows; familiar with grief, as one who had known little else. The burden of his infirmities was greater than he could bear; his fine intellect became a ruin, which reason wondered over, but did not occupy, and by its warning light showed less the original beauty of the structure than the completeness of the overthrow. The remainder of his life was passed in seclusion. Years afterward, when his country's independence had been declared, he stood one summer's day in the porch of the farm-house, his retreat, watching a sudden shower. One flash, and one only, harming nothing else, struck Otis. In this wise all that was mortal of him perished."



## CORTLANDT PARKER (1818- ), New Jersey

### THE LAW AND ITS PRACTICE

"Crowds yearly enter the bar and then disappear forever from its practice, most of them ready enough to labor, but few with the moral courage, even if otherwise able, to wait. But for the thinning process, though the defection of despair, constantly going on, there would I fear, be little room for those who are fit to stay. There is no profession from which desertions are so numerous. And the reason is that in none is speedy success so difficult. For after all, the temptation to the bar is advocacy. The delight of forensic strife, the fame which follows forensic triumph, its rewards in social consideration and political opportunity, its frequent ending in judicial place and dignity—it is these which bring forward, year by year, the rushing, eager, jostling crowd of youthful aspirants, while ambitious parents help, all forgetful of all professions, that namely, of the legal advocate. \* \* \* Life in a trade or in a business is effort almost only for one's self. Life in a profession is constant employment for others. And thus and here, as elsewhere, is it true that 'it is more blessed to give than to receive.' \* \* \* Forget yourself in your case. Never make a trial or a speech an occasion for self-display. Never, if possible, try a cause without thorough information and preparation. Abstain from giving more evidence than your case needs. Never rely on your advisory to make up your case. Beware of cross-examination—it is an edge tool. Regard it generally, as defined to be the art of determining as by instinct, what questions not to ask. Never do anything or say anything merely to please your clients, nor submit to their non-intelligent whims. It is his interest, not his whims or his wishes, that you are to consult. Admit but one motive, to-wit: the fairly gaining his cause, and accustom yourself to seek that from sense of right. The client will pardon everything to success."

### JOSEPH P. BRADLEY

Mr. Justice Bradley is the most deeply informed man I ever met on subjects foreign to his profession."

### HENRY STANBERY AND THOMAS EWING

"I remember the distinguished Mr. Justice Grier of the United States Supreme Court, one of the foremost among the great judges the country has produced, saying that one of the delights and consolations of his tedious labors upon the bench was to hear an argument between Henry Stanbery and Thomas Ewing, of Ohio. Both these men have national fame, and though both enjoyed political honor, their fame as advocates is not marred. Their chief distinction was in the forum. Stanbery was the skillful, enthusiastic, ready, brilliant, logician. Ewing possessed in greater measure the solid, strong, weighty force, which in a measure distinguished both. Stanbery wielded the scimitar of Saladin, Ewing the battle-axe of Richard."—*Suggestions to Young Lawyers*, 1895.

### DAVID GRAHAM AND GEORGE WOOD

"Graham was a model of the advocate, pure and simple, the advocate through love of the art. Without descending to aught unworthy, his zeal for his client during trial was absorbing, and its magnetism irresistible; it seemed to exude from every pore; it fired his eye; it inspired



every motion. In manner he was not only courteous but courtly. He was a master of the art of fence, unlimited in resources, possessed till the verdict with his cause. Difficulty seemed but to stimulate him. Nothing could ruffle his apparent conviction of the rightfulness of his side, and that was a desperate cause, indeed, which remained so in his hands. Juries were entranced by his apparent sincerity and tact, and judges half beguiled by his bewildering earnestness. His elocution was impassioned and overwhelming, his ratiocination close and most ingenious. His strength seemed to lie in the appearance and energy of his convictions. In the early morning of his fame he died, spotless in character, the pride of the young bar of the great city in which he lived. Perhaps, had he lived, he might not have remained equally eminent. He loved excitement too much, and might have been too exclusively an advocate in criminal trials, which in his day the best of the profession conducted. Yet, it is greatly to be deplored that branch of advocacy should be avoided so much by the worthiest of the profession. Nowhere is honorable advocacy so essential to the public good.

"George Wood, a Jersey lawyer, late in life, moved to New York. He lived longer, attained more valuable eminence, and was, doubtless, the greater man of the two. He was a great advocate, mostly because he was a great reasoner and profound lawyer. His early years were given up to thoughtful study. Love of classical English gave him a pure Saxon style and his arguments were rather calm and dispassionate theses, semi-judicial explanations of the law, and applications of it to the case in hand than apparent advocacy of his side. As he spoke the feeling was that he must be right, he was so clear, so simple, so comprehensive in matter of in manner. He talked quietly, without gesture; in such a way as that you never thought of art, and yet I am convinced that both his manner and his matter were the result of habitual care, study and effort. It seems to me that George Wood was the ablest advocate before a court within my knowledge. In his peculiar lines of real property, equity and corporation law, I do not think that even Webster was his equal. And yet he could never have approached the excellence he attained but by severe and life-long study. There is an anecdote of Webster that after long conferences with a client in a United States Supreme Court case, his client asked if there was anything more that he could help him by knowing. 'Yes,' said Webster, 'Who are against us?' Two or three eminent men were named, and the client closed by saying: 'Besides these, there is a sleepy man named George Wood.' 'George Wood!' said Webster, 'then we must try not to wake him up.' "—*Idem*.

## SIXTY-SIX YEARS A PRACTITIONER

Parker was admitted to the New Jersey bar in 1839. He has been a practitioner at the bar continuously over sixty-six years.

—*Jas. J. Bergen, on article on 'Mercer Beasley,' 6 Gt. Am. Lawyers, 533.*

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## LORD CAMDEN

There is an amusing story told of Lord Camden, when a barrister, having been fastened upon the stocks on the top of a hill, in order to gratify an idle curiosity on the subject. Being left there by the absent-minded friend, who had locked him in he found it impossible to procure his liberation for the greater part of the day. On his entreating a chance traveler to release him, the man shook his head and passed on, remarking that of course he was not put there for nothing.



## THEOPHILUS PARSONS (1750-1813), Massachusetts

### SHOULD SUPPORT THE PUBLIC SCHOOLS

"You will not probably want these schools for your children, and possibly they will not want them for theirs; but many generations that succeed them will be sure to need the schools for their own families, for they are in all probability to be poor. In this country the wheel of fortune not only may, but must, revolve faster in some instances than in others, but turn it must. The rich of any generation are the descendants, and generally the immediate descendants, of the poor. *Their* descendants will in most every case take their place among the poor, in one or two generations more; and because there are many more of the poor than of the rich, each family must number more of its generations among the poor than among the rich. If, therefore, you wish to provide for the greater number of your own descendants, provide now, permanently, for the poor."

Judge Powell said of Parsons: "While Parsons knew more law than any other man, he knew more of everything else than of law."

### QUIBBLING

"If ever quibbling is at any time justifiable, certainly a man may quibble for his life."—*In Commonwealth v. Hardy*, 2 Mass., 316, 1807.

### INTERRUPTED COUNSEL

"Parsons was in the habit of addressing very fraternally all the older counsellors who had been his associates at the bar. Often when Mr. Ames, or Mr. Otis, had arrived at a point at which it was intended to introduce some choice and carefully prepared specimen of eloquence, the Chief Justice would interpose with, 'Brother Ames or Brother Otis, the Court wishes to hear no more on that point;' or, 'you need press that no farther; the Court is satisfied on that point.' The effect of these dampers upon Brother Ames, or Brother Otis, was very apparent and amounted almost to strangulation. \* \* \* The Judge also had the habit of frequently interrupting an advocate, and overwhelming him with help. Mason, Otis, Story, Ames, Dexter and others were alike the sufferers. In the midst of an argument and, when the dislocation of his thoughts must be extremely troublesome to the advocate, the Chief Justice would say, 'Brother Dexter, suppose you take this view of it,' and then proceed with an argument, for five minutes or more. This, frequently repeated, became insufferable. Upon one occasion, Mr. Dexter thought he perceived a tendency rather to make, than administer, the law. Dexter finally drew from his pocket a small volume, and said, 'May it please your Honor, I will read with your permission, a few passages from the book which I hold in my hand.' 'What book?' said the Chief Justice, taking his pen in his hand to make a note of it. 'My Lord Bacon's Civil and Moral Essays. I read from the 56th essay, on Judicature, 'Judges ought to remember that their office is *jus dicere* (to apply the law) and not *jus dare* (to make the law); to interpret law, and not to make law, or give law. Else will it be like the authority of the Church of Rome, which under pretext of exposition of Scripture, doth not stick to add and alter; and to pronounce that which they do not find; and by show of antiquity to introduce novelty. Judges ought to be more learned than witty; more revered than plausible; and more advised than confident. \* \* \* Patience and gravity of hearing is



an essential part of justice; and an over-speaking judge is no well tuned cymbal. It is no grace to a judge, first to find that which he might have heard in due time from the bar; or to show quickness of conceit in cutting off evidence or counsel too short or to prevent information, by questions, though pertinent.' Mr. Dexter quietly replaced the volume in his pocket, and proceeded with his argument, without further interruption."—*Sigma's 'Reminiscences of Sam'l Dexter, 56-8.*

### "THEAWFULLEST" PARSONS

"As I recollect Parsons' appearance on the bench, he wore a wig which came within some two inches of his eyebrows. His whole appearance was ungraceful and unwieldy; furnishing considerable justification for a wretched and frequently repeated pun upon his name, 'Theawfullest Parsons.' "—*Sigma's 'Rem. of Dexter,' 54.*

### "KEEPING TIME FROM ETERNITY"

"A gentleman named 'Time' had been concerned in a duel; the ball of his antagonist struck his watch and remained there. It thus saved his life. The Watch was afterwards exhibited, with the ball remaining in it, in a company where Judge Parsons was present. It was observed by several that it was a valuable watch. 'Yes,' said Parsons, 'very excellent; it has kept 'Time' from eternity.' "

### JUDGE THERON METCALF'S ANECDOTE

"The Chief Justice's manner to the Bar, as is well-known, was exceedingly rough. He was no respecter of persons, and treated the old and eminent lawyers quite as harshly as the youngsters. The Bar used to call him 'Ursa Major.' The chief Justice used to look over the pleadings carefully before the trials began. It was in the time when special pleading often brought the issue to be decided into a narrow compass. Soon after the case was begun, the Judge would take the case out of the hands of counsel and examine the witnesses himself, and give an opinion, which was likely to be implicitly followed by the jury. Jabez Upham, of Brookfield, in Worcester County, Mr. Justice Gray's grandfather, once sent his office-boy to Court with a green bag containing his papers, thinking there was no use in going himself. At last, the leading members of the Bar of Boston got very angry, and four or five of them agreed together to teach the old Chief a lesson. So they sat down to a trial in the Supreme Court, where Parsons was presiding. Pretty soon he interfered with the lawyer who was putting in the case for the plaintiff, in his rough way. The lawyer rose and said: 'I cannot take care of my client's rights where my own rights are not respected.' Sullivan, who was possessed of the case, took the place. The trial went on a little while when something happened which offended Sullivan. He rose and said he could not go on with the case after his Honor's remark, and would ask Brother So-and-So, perhaps Otis, to take his place. This happened three or four times in succession. The Chief Justice saw the point and adjourned the Court very early for the noon recess, and went to the house of his colleague, Judge Sewall, who lived out somewhere in the Neck, called him out, and said: 'You must go down and hold that Court. There is a conspiracy, sir!' Parsons never held a nisi prius in Suffolk again."—2 *Geo. F. Hoar's 'Autobiography of 70 Years,' 397-8.*

### JUDGE LEMUEL SHAW'S EXPERIENCE

"Chief Justice Shaw used to tell with great indignation the story of his first appearance before Parsons, when a young man. There was a



very interesting question of the law of real property, and Samuel Dexter, then the head of the Bar, was on the other side. Parsons was interested in the question as soon as it was stated, and entered into a discussion with Dexter, in which they both got earnestly engaged. The Chief Justice intimated his opinion very strongly and was just deciding it in Dexter's favor, when the existence of the young man on the other side occurred to him. He looked over the Bar at Shaw and said: 'Well, young man, do you think you can aid the Court any in this matter?' 'I think I can, sir,' said Shaw with spirit. Parsons listened to him, but, I believe, remained of his first opinion."

—2 *Geo. F. Hoar's 'Autobiography of 70 Years,'* 398.

### HIS OPINION STUCK IN HIS THROAT

A client wrote a letter to Parsons, stating a case and requesting his opinion upon it, and enclosing \$20. After a lapse of some time, receiving no answer, he wrote a second letter, informing him of his first communication. Parsons replied that he had received both letters, had examined the case, and formed his opinion, but somehow or other, "it stuck in his throat." The client understood the hint, sent him \$100, and received the opinion.

### MADE COUNSEL STATE WHAT THEY WERE GOING TO STAND ON

"He generally required the counsel to state to him his points before he began. If they were in his judgment wholly untenable or insufficient, he permitted no argument, and allowed the case to go no further than was requisite to present to the whole court the question of law, if there was one, by which it might be decided whether the nonsuit of default he ordered should be taken off.

"At Worcester, Frank Blake, perhaps the leading lawyer of the county, and one of Judge Parsons' most intimate friends, arose to argue a case: 'Stop a moment, Brother Blake,' said Judge Parsons. 'What points do you propose to present to the jury on this evidence?' 'I will, if your Honor pleases, state them to the jury.' 'No, you must state them to the court first.' 'I decline doing so, may it please your Honor; and I insist on my right to address the jury in my own way.' 'Certainly, if you address them at all, you may address them in your own way, and there can be no better; but I must first know whether you have any case to speak about. I do not now see one; but perhaps you may point one out.' 'I will endeavor to do so to the jury.' 'No, you must do so first to me.' 'This I positively decline.' 'Very well, with any view of the case I can now take, you will waste the time of the jury, the court, and the county, by any argument.' Mr. Blake then rose, and turning to the jury began: 'Gentlemen of the jury,' when Judge Parsons instantly said, 'Mr. Sheriff, commit Mr. Blake to close jail,' and quietly rose, and began charging the jury."

—*Theophilus Parsons, Jr. 'Memoirs of Theophilus Parsons, Sr.'* 209.

### MR. TRISTAM BURGESS REFUSED TO STATE HIS POINTS

"In Taunton, Mr. Burgess, of Rhode Island; when asked to state his points, rose and stated one. 'That is no point at all, Brother Burgess; have you another?' 'Yes, your Honor,' and stated it. 'You have not a particle of evidence for that point, as you very well know; what other?' And so the thing went on, until Judge Parsons flatly refused to let him speak. 'May it please your Honor, I think I have a good case, an excellent case, and believe I can satisfy the jury of it, and demand as matter of



right permission to try,' said Mr. Burges. 'A very good case you have, no doubt; but, unluckily, no evidence, and therefore nothing to go to the jury on.' Mr. Burges at once gathered up his papers, and marched indignantly out of court, while Judge Parsons proceeded to charge the jury. Outside, Mr. Burges harangued the crowd about the Chief Justice's insupportable tyranny, until all at once, he observed the Judge as one of his listeners, who said when he stopped his tirade, 'Brother Burges, if you get through in season, I wish you would come in and dine with me.' Pausing a moment, Mr. Burges exclaimed, 'I give it up; I give it all up;' and took the Judge's arm and they walked off together."

—*Parson's Memoirs*, 209-11.

### HAD A POOR OPINION OF ORATORY

Chief Justice Parsons used to say that eloquence was an unfortunate gift for a lawyer, as it prejudiced the jury against him, and thus hindered his success. "A jury will determine beforehand," he used to say, "that an eloquent talker shall not hoodwink them, or exercise a mastery over their minds. Consequently they set themselves to resist the power of his persuasion." Judge Parker used to tell a capital anecdote in confirmation of Judge Parsons's opinion.

"When Parsons was a young lawyer, he was retained to argue an important case in a Maine court. He was unknown to the people, and even to the lawyers. Parker had heard of him as a rising man, and was drawn to the court-room by curiosity to learn the secret of his power. Parsons began his plea by putting one foot in a chair; then leaning one elbow on his knee, he talked to the jury as a man would tell a story at his fireside. 'Pretty soon I thought I understood him,' said Parker. 'He was winding the jury round his fingers. He made no show. He treated the case as if it were a very simple affair, of which the conclusion was obvious and inevitable; and he did not take long. He got a verdict at once; and after the jury were dismissed, one of them, whom I happened to know, came to me and said, 'Who is this Mr. Parsons? He isn't much of a lawyer, and don't talk or look as if he ever would be one; but he seems to be a real good sort of a man.' "

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### WM. M. EVARTS' CONTINGENT FEE

A New Yorker asked Evarts what he would charge for managing a certain law case.

"Well," said Evarts, "I will take your case on a contingent fee."

"And what is a contingent fee?"

"My dear sir," said Mr. Evarts, mellifuously, "I will tell you what a contingent fee to a lawyer means. If I don't win your suit I get nothing. If I do win it you get nothing. See?"

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### THE LAWYER WAGERED \$10.00

Pat, a one-eyed Irish lawyer, bet the Yankee judge ten dollars that he could see more with one eye than the judge could with two, and agreed to leave it to his honor to say who had won the bet.

"Well," said the Judge, "go ahead. Let's hear how you can see more than I can."

"You see" said Pat, "I can see two eyes in your head, while you can see but one in mine." The judge passed him the ten.



GEORGE R. PECK (1843- ), Kansas

### THE THINKER

"The citadel that crowns the mountain's brow, nay, the mountains themselves, ancient, rugged, motionless, are but toys compared with the silent, invisible, but eternal structure of God's handiwork, the mind. \* \* \* The village of Concord, where Emerson, Hawthorne, Alcott, Thoreau lived, was in their day, and will long continue to be a greater force in this nation than New York and Chicago added to each other. We may rest in the assured faith that whoever may seem to rule, the thinker is, and always will be, the master."

—Geo. R. Peck, "*The Kingdom of Light.*" an address before the Phantom Club, at Phantom Lake, Wis., 1906.

### MIND AGAINST FORCE

"When I hear the glorification of the last twenty years, of the fields subdued, the roads built, the fortunes accumulated, the factories started, I say to myself, all these are good, but not good enough that we should make ourselves hoarse with huzzas, or that we should suppose for a moment they belong to the higher order of achievements. Sometimes, too, when I hear the noisy clamor over some great difficulty that has been conquered, I think of James Wolfe under the walls of Quebec, repeating sadly those solemn lines of Gray's Elegy:

"The boast of heraldry, the pomp of pow'r,  
And all that beauty, all that wealth e'er gave,  
Await the inevitable hour;  
The paths of glory lead but to the grave."

"And I think also how he turned to his officers with the pathetic prevision of the death that was to come to-morrow on the Heights of Abraham, and said, 'I would rather have written that poem than to take Quebec.' And he was right."—*Idem*.

### GENERAL GRANT

"But what was he? A general who never lost a battle; a leader who never quailed in any presence; a commander whose supreme hour was always now. He knew the home-spun word, duty. By the light of that sublime word he moved on Donelson in the dead of winter, and wrested from the enemy its most important fortress and an army larger than his own. By its light, he drew the lines around Vicksburg's fated garrison and held them with a deadly grip until another army yielded up its arms. By its light he grappled in the wilderness, and in that desperate hour, saw the dark woods grow white with the radiance of the coming triumph. A genius, perhaps, he was not. But he had the largeness of comprehension, that mastery of self, that relentless vigor of action, which if it does not always win the battle, never loses it. They said he was not always true to the military rule; but the time will come when his campaigns will be studied by students of war, as are those of Marlborough and Frederick. Men talk of luck, as if the keys of destiny were thrown carelessly around for any hand to grasp. True it is, there is a mysterious, indefinable something compounded of time and opportunity which makes success. But mark how scornfully it passes by the slothful and the timorous to set its seal upon the brow of him who answers to the call of fate. 'I doubted that it was right to set the flag a little closer to the



enemy.' He never walked in primrose paths. War, as he understood it, meant hard, rough blows, the cruelty of battle, the hammer and the anvil now, peace and her mercies when God shall appoint the hour. In his Memoirs he has told us how little taste he had for military life. Nature formed him of gentle mould and tempered him also with the resolute will, the iron nerve 'to turn occasion true.'

"How plain and simple he was. The feverish vision that disturbs the souls of so many great soldiers never troubled him. The ambition that bubbles of glory and whispers sometimes of thrones and diadems found him deaf to every voice, save that which bade him go forward to the duty that lay nearest. I call him great, not forgetting that greatness commonly needs the perspective of years. It is the antique that seems colossal. You wreath the name of Pericles with glory, but his contemporaries deemed him worthy of fines and punishment. English hands exhumed the bones of Oliver Cromwell and hung them on a gibbet. Today history has named him incomparably the greatest of English soldiers and of English rulers. Washington, Lincoln, Grant tasted the bitterness that gathers in the cup of the world's greatest men.

"Who hath lived without blame. If Grant had faults they may be summed up in these words, 'he loved his friends and did not hate his enemies.' His nature was simple and his very faults made him more easy to deceive. But, I, for one, would not have it otherwise. I would not take from that noble life one little flaw through which the real brightness of his character shines more plain. Victory is sweet to a soldier's heart. When Lee surrendered, the measure of success so far as that can go, was heaped and crowded for U. S. Grant. He had won for all time the fame of a great general. But he was something more than a great general when the hour he bade the weary soldiers he had fought so long, go back to their farms, and build up their broken fortunes in the peace he had won for them and for us all. It was an act such as poets love. When they sing of Arthur and the table round, or of the fabled Cid, whose gentle hands bound up the wounds his own right arm had made. Some blossoms from the famous apple tree dropped into the old commander's heart and filled it with the sweetness of the spring. But why dwell on these things? The great leader is at rest. How widely diffused have been his acts and his example. In quiet vales, in thronging cities and upon the uttermost land men speak of Grant and find in his very name omens of security and peace. The armies he led, vanishing now with the vanishing years, share his fame. This statue, and all the monuments a grateful people raised to him, attest equally the every day heroism of the common soldier. The good cause is well commemorated. In the old days, old and grim as they seem now, we thought of a mighty and puissant nation that was to be. We thought of it as free, as great, noble, powerful, unanimous. To help on the coming of such a nation as we thought it worth while to fight, and some, who were of the best and bravest, thought it almost a privilege to die. And now the dream has come true. This statue is history in bronze. It means all that the war has accomplished, peace, freedom, and the inviolable sections of national unity to you, and the lesson it teaches. Grasp the meaning of the word duty, and you have the answer. For gloried is that home-spun word in Wordsworth's immortal line—'Thou dost preserve the stars from wrong.'

"The very universe is but the obedient response to an omnipotent thought. It is only duty that holds systems together, and fills all space with the melody of order and of law.

"Here let the statue stand, the tribute of generous hearts to a high ideal. You will come with reverent steps to look upon it, and when the air is loud with the noise and turbulence of faction, they will hear above it all the solemn words of the old commander, 'Let us have peace!'"

—From speech at the unveiling of a Monument to Gen. Grant, at Fort Leavenworth, Kans.



## GHOSTS AND SHADOWS

"In every street, shadows are walking who were once brave, hopeful and confident. Nay! They are not shadows; but ghosts, dead, years ago, in everything except the mere physical portion of existence. They go through the regular operation of trade and traffic, the office, and the court; but they are not living men. They are but bones and skeletons rattling along in melancholy routine, which has in it neither life, nor the spirit of life. It is a sad picture, but saddest because it is true. They know what happy days were, when they walked in pleasant paths and felt in their hearts the freshness of the spring. But contact with the world was too much for them. Hesitation and doubt drove out loyalty and faith. They listened to the voice of worldly wisdom as Othello listened to Iago, and the end of the story is:

" 'Put out the light, and then, put out the light!' "

## THE KINGDOM OF LIGHT

"This is the lesson I would give: Dwell in the Kingdom of Light. And where is that kingdom? What are its boundaries? What cities are builded within it? What hills and plains, and mountain slopes gladden the eyes of its possessors? Be patient. Do not hasten to search for it. It is here. The Kingdom of Light, like the kingdom of God, is within you. And what do I mean by the kingdom of light? I mean that realm of which a quaint old poet said those quaint old lines:

" 'My kingdom to me a kingdom is,  
Such perfect joy therein I find.'

"I mean that invisible commonwealth which outlives the storms of ages; that state whose armament are thoughts, whose weapons are ideas, whose trophies are the pages of the world's great masters. The kingdom of light is the kingdom of the intellect, of the imagination, of the heart, of the spirit, and the things of the spirit."

## THE STUPID

"It is the stupid, and not the wise, who never err."

—*From an Article on J. J. Ingalls.*

George R. Peck was general solicitor for the Atchison, Topeka and Santa Fe Ry. Co. for years at \$25,000 a year, a greater part of the time located in Chicago, Illinois. Mr. Peck, while he lived in Kansas, refused political and judicial positions, among them a U. S. Senatorship, preferring to stick to the law.

## FRAUD

"Fraud vitiates everything into which it enters. It is like the deadly and noxious simoom of arid and desert climes. It prostrates all before its contaminating touch, and leaves death only and destruction in its train. No act however solemn, no agreement however sacred, can resist its all-destroying power."

—*Commercial Bank of Manchester v. Buckner, 20 Howard, 109.*



## EDWARD J. PHELPS (1822-1900), Vermont

EDWARD J. PHELPS: "You have performed the duty devolving upon you in a manner deserving of admiration. You have blended the deep science of the lawyer with the refinement of the man of letters, and the dignity of the diplomatist. The court appreciates the delicacy of the touch with which you have handled matters already before us in manifold form. I beg to be allowed to consider the laurels which you have won at this cosmopolitan bar as a fair addition to the wreath of honors that you have conquered in other fields of the old and new world."

—*Baron d'Estournelles de Constant, of France, President of the Bering Sea Tribunal, before whom Mr. Phelps appeared.*

### LANGUAGE, A MONUMENT

"The earth is studded with monuments. From the earliest period of recorded time mankind has striven for a language more durable than words, in which human memories might be perpetuated. They have found it chiefly in the symbolism of monumental architecture. But for the employment of that language there must be sentiments to be transmitted worthy of its grandeur. In those lie the appeal to futurity, not in the medium of expression, however powerful or expressive. And, therefore, it is that the most imposing and venerable of such structures known to the world only stand silently over the grave of the dead past. They have no history to relate, no lesson to teach, solitary relics of a race that is extinct, a civilization that has perished, institutions that have disappeared, cities and temples that have returned to the dust, to research and imagination they are equally dumb. The desolation of the desert surrounds them. We regard them with wonder, but without instruction."

—*The Bennington, Vt., Centennial, Aug. 19, 1891.*

### THE AMERICAN LAWYER

"Perhaps the brethren of our profession do not always remember the high prerogative, which under our system of fundamental law, different from any other we know of, the American bar enjoys. Lawyers in other countries have nothing to do as lawyers with constitutional principles, government, or with the basis on which its administration stands. They deal exclusively with the administration of justice, civil and criminal, between man and man, under a government established and fixed, with the operation of which they have professionally no concern. We, on the other hand, are charged with the safe-keeping of the Constitution itself."—*Before Am. Bar Ass'n., Saratoga, N. Y., Aug. 21, 1879.*

### RUFUS CHOATE, CULTURED

"Perhaps the most brilliant example of the effect of literary culture upon advocacy that ever appeared at the bar was that of Rufus Choate. Now the spirit and the voice of the old civilizations, those splendid intellectual civilizations that have passed away, the silver-tongued Greek, the sonorous Latin, as well as the grand old English undefiled, lived again in his eloquence. He is the brilliant example of what culture and scholarship, familiarity with letters, does for the advocate. Mere advocacy never hews the way. Reason, logic, learning does that. But it illuminates. It is the calcium light that points the way that reason hews out through the rocks, that the wayfaring man may see it."

—*'Law as a Profession,' class day address to Boston University Law School graduates, June 3, 1879.*



## INTELLECTUAL HONESTY OF LAWYER

"Now, the great requisite, as it seems to me, the one that in its perfection, I have often thought, the very rarest intellectual quality that a man is capable of, the one to be most assiduously cultivated, and perhaps, the one that best repays culture, is what, for want of a better term, I may call *intellectual honesty*. It is a mental and not a moral quality. Of course, it is one which involves high moral integrity. But those who are honest in their intentions and purposes, merely, may fall far short of it. By intellectual honesty, I mean the faculty of seeing things as they are, unmoved by prejudice, or passion, or excitement, or clamor, seeing them, and reaching conclusions in regard to them, in a straightforward and direct, instead of a circuitous, way. That is the leading characteristic of every great lawyer or judge that has ever lived, and the want of it is the reason why the world has seen so many good lawyers and good judges, and so few great ones. It is the rarest of qualities in its perfection, and the first to be recognized by mankind when it exists. Men will quarrel over the merits of poets and statesmen and inventors, but when that magistrate presents himself in the administration of justice, who has in high degree this quality of intellectual honesty, everybody recognizes and appreciates it. Perhaps, the most illustrious example there has ever been, among many illustrious examples of that quality, was Chief Justice Marshall, that magistrate of all magistrates, whose splendid judgments have entered, not only into the jurisprudence, but into the history and literature of our country."

—*'The Law as a Profession,' Boston, Mass., June 3, 1879.*

## INDEPENDENCE OF A FREE GOVERNMENT

"The history of the Saxon race exhibits few changes more striking than the succession of power. First, in the king; then when royal supremacy became intolerable, in the hands of the barons, who struck the earliest blow for freedom, and long stood between the throne and the people, the supporters of one, the protectors of the other. When, in the course of time that oligarchy had in its turn abused its authority, it passed to the Parliament chosen by the people. And when, at last, the founders of our Constitution, driven to revolution by a parliamentary oppression, had learned that even representative government cannot always be depended upon by those it represents, they placed the protection of personal rights beyond the reach of the popular will, and found in a constitutional judiciary the true and final custodian of the liberty of the subject."

—*'The U. S. Supreme Court and the Sovereignty of the People,' N. Y. City, Feb. 4, 1900.*

## DANIEL WEBSTER, AN INTERNATIONAL LAWYER

"There can be no higher or more truly American authority than his (Webster's) on any question of international right, on which he ever had occasion to impress himself."

—*On 'The Panama Mission,' the 'Monroe Doctrine,' Brooklyn, N. Y., Mar. 30, 1876.*

## PROPHECY AND HOPE

"The gift of prophecy is mercifully withheld from man, but that hope, kindlier than prophecy, stands in the place of it, and it beholds with the eye of faith the great principles of civil and religious liberty, working themselves out to their final maturity, a prosperity more and more widely diffused among common men; an advancing civilization not without the vicissitudes, the blemishes, the mistakes, the sorrows through



which humanity's path must always lie, but in which the gain shall surpass the loss, and the better surmount the worse, enlightened, from generation to generation, by the increasing intelligence, and a higher morality."

—'Anniversary Oration,' Bennington, Vt., 1891.

### PHELPS AS A LAWYER

"Mr. Phelps was not a case lawyer; but a great lawyer; he understood law as a science; was thoroughly grounded in its great fundamental principles; he could analyze and generalize equally well; easily made his way through intricacies to the fundamental principle which solved the problem. During his occupancy of the Kent professorship at Yale, it was one of the most noted in the country."

### CAN READ TOO MUCH

"What booteth it to read *much*, which is a weariness to the flesh; to learn daily with increase of knowledge; when he hath learned, and perhaps, then especially, when he hath most need thereof? Without this, our studies are but lost labor."—*Studii Legalis Ratio*, 15, A. D., 1675.

### POLITICAL PRINCIPLES—ETERNAL

"I would not be unjust to heroism in the field in a good cause, or be ungrateful to those who have exposed their lives, as well as fortunes and sacred honor, for their country, from Leonidas and Scipio of antiquity to the Washington of modern days. But it behooves us all to remember that even in modern days physical bravery is often wasted in a bad enterprise and perverted in the Tamerlanes and Caesars and Napoleons and Santa Annas to enslave mankind, as frequently as to emancipate them; and that its triumphs are transient, personal, and at times die in their withered hopes and guilty ambition moulder with them, in one common grave. Political principles, on the contrary, are eternal. They pervade society and government as air and water pervade physical being. They control them, too, as the different elements control vegetation and animal life; and they move the whole, as the mechanic powers and other great laws of motion, constitute a mechanism that moves the universe, and they will continue to do this as long, as widely and as deeply as the others pervade matter; and in this way civilization and liberty are, if ever, to become universal, eternal.

"Among the high justifying principles involved in any civil contest, one of the highest was at stake in the Revolution of 1776, and tended much to enhance its lofty interest, and the magnificence of its consequences. It was the principle of self-government. That lies at the foundation of all security for liberty. That made the struggle vital as well as righteous. The first illustration of this principle was that man should not be taxed, except by himself or agent. 'No taxation without representation,' reverberated through every American village and legislative assembly—crossed the ocean and rung through the halls of Parliament and the palace of St. James. The next illustration involved the idea of natural equality in political power, and the duty of all government to respect, shield and enforce those equal rights and carry out all their elevating influence to the toiling millions, no less than other classes. It is these and not the burning of gun powder and the hecatombs of killed and wounded, which have imparted such a magnitude to that contest and its successful results and have given to those over the civilized world almost the interest of a great epic poem."

—From Levi Woodbury's oration at Portsmouth, N. H., July 4, 1850.

1 'Woodbury's Writings', 577-8.



CHARLES PHILLIPS (1788- ), Ireland

### PHILLIPS' DESCRIPTION OF PLUNKET

"Who is that square-built, solitary, ascetic-looking person, pacing to and fro, hands crossed behind his back, so apparently absorbed in self—the observer of all, yet the companion of none? It is easy to designate the man, but difficult adequately to delineate the character. Perhaps never was a person to be estimated less by appearances; he is precisely the reverse of what he feels; extremely cold, yet ardent in his nature; in manner repulsive, yet warm, sincere, and steadfast in his friendships; severe in aspect, yet in reality social and companionable—that is Plunket—a man of the foremost rank, a wit, a jurist, a statesman, an orator, a logician, the Irish Gysippus, as Curran called him; in whom are concentrated all the energies and all the talents of the country. Eminent at the bar, it is in Parliament we see his faculties in their fullest development. Yet, in the Irish House of Commons, his chief displays were on a single question, that of the Union; and in the British Parliament, that of the Roman Catholic question."

—*As sketched when Plunket was in his prime.*

### DEFENSE OF WIDOW WILKINS

"It has been left to me to defend my unfortunate old client from the double battery of Love and Law, which, at the age of sixty-five, has so unexpectedly opened on her. Oh, gentlemen, how vain glorious is the boast of beauty! How misapprehended have been the charms of youth, if years and wrinkles can thus despoil their conquests, and depopulate the navy of its prowess, and beguile the bar of its eloquence. How mistaken were all the amatory bards, from Anacreon downwards, who preferred the bloom of the robe and the trill of the nightingale to the saffron hide and dulcet treble of sixty-five! \* \* \* What a loss the navy had of him, and what a loss he had of the navy! Alas, gentlemen, he could not resist his affection for a female he never saw! Almighty love eclipsed the glories of ambition! Trafalgar and St. Vincent flitted from his memory! He gave up all for woman as Mark Antony did before him; and, like the cupid in Hudibras, he—

" 'Took his stand  
Upon a widow's jointure land;  
His tender sigh and trickling tear  
Longed for five hundred pounds a year;  
And languishing desires were found  
Of statute, mortgage, bill and bond.'

"Oh, gentlemen, only imagine him on the lakes of North America! Alike to him the varieties of season and the vicissitudes of warfare. One sovereign image monopolizes his sensibilities. Does the storm rage? The Widow Wilkins outsighs the whirlwind. Is the ocean calm? Its mirror shows him the Widow Wilkins. Is the battle won? He thanks his laurels that the Widow Wilkins may interweave her myrtles. Does the broadside thunder? He invokes the Widow Wilkins.

" 'A sweet little cherub, she sits up aloft  
To keep watch for the life of poor Peter.' "  
—*In Blake v. Wilkins for breach of promise.*



## EDUCATION

"Of all the blessings which it has pleased Providence to allow us to cultivate, there is not one which breathes a purer fragrance, or bears a heavenlier aspect, than education. It is a companion which no misfortune can depress, no crime destroy, no enemy alienate, no despotism enslave, at home a friend, abroad an introduction, in solitude a solace, in society an ornament, it chastens vice, it guides virtue, it gives at once a grace and government to genius. Without it, what is man? A splendid slave! A reasoning savage! Vacillating between the dignity of an intelligence derived from God and the degradations of passions participated with brutes, and, in the accident of their alternate ascendancy, shuddering at the terrors of an hereafter, or hugging the horrid hope of annihilation."

He was graduated at Dublin University and called to the Irish bar, in 1812, where his florid oratory obtained him considerable practice in adultery, seduction, and breach-of-promise-of-marriage cases. He collected his speeches, in '17, and they reached a large sale, edited "Specimens of Irish Eloquence," and wrote, "Recollections of Curran," and afterwards went to London and was a particular friend of Lord Brougham.

## CURRAN'S RISE FROM POVERTY, AS TOLD BY HIM

"I then lived upon Hay Hill; my wife and children were the chief furniture of my apartments; and as to my rent, it stood pretty much the same chance of liquidation with the national debt. Mrs. Curran, however, was a barrister's lady, and what she wanted in wealth she was well determined should be supplied by dignity. The landlady, on the other hand, had no idea of any gradation except that of pounds, shillings, and pence. I walked out one morning to avoid the perpetual altercations on the subject, with my mind, you may imagine, in no very enviable temperament. I fell into the gloom to which, from my infancy, I had been occasionally subject. I had a family for whom I had no dinner, and a landlady for whom I had no rent. I had gone abroad in despondence. I returned home almost in desperation. When I opened the door of my study, where Lavater alone could have found a library, the first object which presented itself was an immense folio of a brief, twenty golden guineas wrapped up beside it, and the name of Old Bob Lyons marked upon the back of it. I paid my landlady, bought a dinner, gave Bob Lyons a share of it, and that dinner was the date of my prosperity."

—Said by Curran as related by Phillips. Chas. Phillips' *'Curran and His Contemporaries'*, N. Y., 1851, p. 50.

## NAPOLEON BONAPARTE

"He is fallen! We may now pause before that splendid prodigy, which towered among us like some ancient ruin, whose frown terrified the glance its magnificence attracted. Grand, flowery and peculiar, he sat upon the throne a sceptered hermit, wrapt in the solitude of his own originality. A mind, bold, independent, decisive; a will despotic in its dictates; an enemy that distanced expedition; and a conscience pliable to every touch of interest, marked the outline of this extraordinary character, the most extraordinary, perhaps, that, in the annals of this world, ever rose, or reigned, or fell.

"Flung into life in the midst of a revolution that quickened every energy of a people who acknowledged no superior, he commenced this course, a stranger by birth and a scholar by charity! With no friend but his sword and no fortune but his talents, he rushed into the lists where rank and wealth and genius had arrayed themselves, and competition fled from him as from the glance of destiny. He knew no motive but



interest, he acknowledged no criterion but success, he worshipped no god but ambition, and with an Eastern devotion, he knelt at the shrine of his idolatry.

"Subsidiary to this, there was no creed that he did not promulgate; in the hope of a dynasty, he upheld the crescent; for the sake of a divorce, he bowed before the cross; the orphan of St. Louis, he became the adopted child of the republic; and with a practical ingratitude, on the ruins both of the throne and tribute, he reared the throne of his despotism. A professed Catholic, he imprisoned the pope; a pretended patriot, he impoverished the country; and in the name of Brutus, he grasped without remorse and wore without shame the diadem of the Caesars. Through this pantomime of policy, fortune played the clown to his caprices. At his touch, crowns crumbled, beggars reigned, systems vanished, the wildest theories took the color of his whim, and all that was venerable and all that was novel changed places with the rapidity of the drama.

"Even apparent defeat assumed the appearance of victory; his flight from Egypt confirmed his destiny; ruin itself only elevated him to empire. But, if his fortune was great, his genius was transcendent; decision flashed upon his counsels; and it was the same to decide and to perform. To inferior intellects his combinations appeared perfectly impossible, his plans perfectly impracticable, and success vindicated their adoption. His person partook the character of his mind—if the one never yielded in the cabinet, the other never bent in the field. Nature had no obstacle that he did not surmount; space no opposition that he did not spurn; whether amid Alpine rocks, Arabian sands, or Polar snows, he seemed proof against peril, and empowered with ubiquity.

"The whole continent trembled at beholding the audacity of his designs, and the miracle of their execution. Scepticism bowed to the prodigies of his performance; romance assumed the air of history; nor was there aught too incredible for belief, or too fanciful for expectation, when the world saw a subaltern of Corsica waving his imperial flag over the most ancient capitals. All the visions of antiquity became commonplace in his contemplation; kings were his people, nations were his outposts, and he disposed of courts, and crowns, and camps, and churches, and cabinets as if they were titular dignitaries of the chessboard. Amid all these changes, he stood immutable as adamant.

"It matters little, whether in the field or in the drawingroom, with the mob or the levee, wearing the Jacobin bonnet or the iron crown, banishing a Braganza or espousing a Hapsburg, dictating peace on a raft of the Czar of Russia or contemplating defeat at the gallows of Leipsic, he was still the same military despot.

"In this wonderful combination, his affections of literature must not be omitted. The jailer of the press, he affected the patronage of letters; the proscriber of books, he encouraged philosophy; the persecutor of authors and the murderer of printers, he yet pretended to the protection of learning. Such a medley of contradictions and at the same time such an individual consistency were never united in the same character. A royalist, a republican, and an emperor; a Mohammedan, a Catholic, and a patron of the synagogue; a subaltern and a sovereign; a traitor and a tyrant; a Christian and an infidel; he was through all his vicissitudes the same stern, impatient, inflexible, original; the same mysterious, incomprehensible self—a man without a model, and without a shadow."



## JOHN F. PHILLIPS (1834-1919), Missouri

### DEATH AND RESURRECTION

"A funeral in the gloom and desolation of winter always depresses me. These forest trees, bereft of foliage, the grass dead, flowers faded and gone, these flowers that lie over his casket all too soon to fade away. The summer birds hushed, all earth lying drear and chill; but we know that after a while the sun will rise higher and higher toward the zenith till its warming rays will meet the ice; the birds will begin to sing as the harbingers of spring, gentle flowers will peep from beneath their winter beds and lend their cheeks to be kissed by the summer sun into new life, and all Nature will again perform the sacred mystery of reproductive growth. To me this is an epitome of the resurrection, and assurance that this mortality will put on immortality, and when the morning sunlight of the resurrection day shall flash over the cemeteries and the ashes and dust of loved ones gone shall come forth in glory, we have a sublime faith that among those redeemed souls shall be that of Frank James."

—*From Remarks at Grave of Frank James, Feb. 21, 1915.*

### ADVICE TO THE YOUNG LAWYER

"The profession you have chosen is among the most exalted that ever engaged the ambition of intellectual men. It belongs essentially to the category of the noble sciences. It is a mighty instrument in the hands of a skilled expert, either for widespread mischief, or private public good. If you sow and plant and cultivate in dishonor, so will you reap and gather. Ceaseless vigilance, persistent and consistent industry are the inexorable conditions of success. Common lawyers can be picked up in heaps, for they lie thick about the level waysides; but the excellent ones are at the tops of the ragged steepes. Yours, more than any other, is the profession to which the present and posterity must look for the preservation of what is beneficent and cohesive in social organism, and for the security and perpetuation of what is rational in a limited democratic government. If you observe and enforce these things, your profession will prove to be a cornucopia, showering you with golden blessings; and you make the world all the better for your living in it."

—*Judge John F. Phillips, of the U. S. District Court, to the law students of the Kansas City School of Law.*

### JOHN MILLS ALLEN, OF MISSISSIPPI

"The passing away of John Mills Allen brings to me deep pangs of sorrow. For more than a score of years we were close friends. I have traveled, eaten, drunk and banqueted with him, heard him speak, talk and laugh. Rarely endowed with a wit and humor that never dulled or tired, he was one of the most delightful companions I ever met. He got more out of life and spread more sunshine about him than words can speak. His wit was not studied, nor was his incomparable humor stereotyped. I have heard him tell the same stories that would have fatigued with their repetition from any other man, but he told them with ever-varying zest and detail that gave them a taste of freshness, and that lost no interest even though his listener knew the climax. He was always spontaneous.

"I recall a trip with him to the Yellowstone Park in 1901 with as rare a party of brilliant, jolly men as ever journeyed together. We were the guests of Col. George R. Peck at his summer home at Oconomowoc, Wis. We were entertained at an evening dinner at Fred Peck's. A royal feast



was set on a broad veranda at the lake front. The Grand Army of the Republic was holding convention there. They gathered around the veranda. George Peck constituted himself toastmaster.

"He introduced me as a representative of the Union Army, to which I responded briefly. He then said that the occasion was rendered peculiarly happy in that there was present 'the only private in the Confederate army, with the Star Spangled banner,' floating over him, representing the best government on earth, which John Allen had tried to destroy, and now he had for an audience the audience the veterans of the Union Army. Allen, with cigar in mouth, arose and among other things, said:

" 'Veterans of the Union Army, I never saw your faces before, but I saw your backs often during the war. But for the fact that a Southern soldier would not shoot a man in the back you would all be in your graves tonight. You would not think in looking at the rotund, obese form of George Peck, that he was a sprinter; yet but for the fact that he could outrun a minnie bullet I would have shot him dead in battle. I am glad I missed overtaking him, otherwise he would not be here this evening eating the rich things that came from the land where grow brave men and pumpkins.' When the coach in which we were riding reached the summit of the Great Divide, it stopped. Peck said:

" 'John Allen, look to your right, and to the left, and behold two of the finest vistas your eyes ever beheld. One brings to view the mountain rising in grandeur to the sky, and the other toward the Yellowstone Lake, twenty miles away, glimmering like a sea of silver. Aren't you sorry you tried to disrupt a country that contains such a feast for the human eye?' Allen replied: 'Yes, George, it fills me with a feeling of sadness. The South before the war was full of these vistas, but you Yankees came down there during the war, stole them and fetched them up North to gloat over it, as you exhibit them to the fallen foe.' At Larry's camp, where we spent the night, at sunset a large bear came down the mountain to forage in the refuse of the camp deposited in a depression. The ground round about formed a huge amphitheater, on which perhaps a hundred tourists were standing, watching the bear, which had tumbled over a barrel into which he had thrust his head devouring its contents.

"Allen took off his coat and handed it to me. Rolling up his shirt sleeves, he faced his audience, to whom he was a stranger, and said:

" 'Ladies and gentlemen, I am going to give you an exhibition of Southern valor, to which you Northern people know so little. I am going to attack that bear in single combat, and do not propose to use any arms on him; all I ask of you is to see that he does not use his arms on me!' When he advanced the bear heard him cracking his fists together, and withdrawing his head from the barrel, began to back away. Whereat Allen said:

" 'Mr. Bear, perhaps you do not care to encounter me in this fashion; if so we will change the affair into a talking match; you can reply when I am through, if the evening be long enough. I will deliver my last speech in Congress on the tariff.' (Then raising his voice, until it echoed from hilltop to hilltop in that high altitude, he said):

" 'Mr. Speaker, though a trite subject, the tariff is of never ceasing interest to the American people.' (His voice frightened the bear, and it fled up the mountain. Turning to the wondering listeners, Allen said):

" 'Ladies and gentlemen, that speech had the same effect on that bear that it had on Congress.'

"He was a contemporary of Joe Wheeler in Congress. The roll was called on a vote of some pending bill while Allen was in the cloakroom. Appearing at his seat at the close of the call, the clerk called his name, inquiring how he would vote. Allen asked how Gen. Joe Wheeler had voted, saying that he had followed General Wheeler through the Civil War, and that he had never led him into any trouble.



What a treasure a book containing his speeches and stories would be. While there was a sting, at times, in his tongue, there was no venom in it. His heart was a well-spring of kindliness; there was no bitterness in it. While he will be remembered long for his unexcelled wit and humor, in truth he was a lawyer of high attainments, a safe legislator, broad in his views on public questions, conservative and dependable."

—*A reminiscence, Nov. 1, 1917, by Judge Jno. F. Phillips.*

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### AUSTIN ABBOTT ON SUCCESS IN LAW

"One of the most important points for a lawyer is the improvement of his own mental habits or methods. Much of the young lawyer's work is necessarily broken, desultory. It is of great importance to his ultimate success that he should not allow this circumstance to interfere with the system and thoroughness of the knowledge which he acquires in the course of his experience. The most useful suggestion I could make upon this point is, that he should make it a rule to learn at least one thing thoroughly every day, and if passing time does not afford opportunity, reserve the question until the most convenient occasion, so that as he goes on with month after month of experience he will not leave behind him a fog of doubts and uncertainties, and having in his mind the illusory form of supposed knowledge. He should read constantly—though not much—the best authorities, and to learn to discriminate between those which command respect and those which do not. Careful discrimination and analysis are of great importance. The most frequent error in law, and the one which misleads practitioners more than any other, is the habit of too broad generalization and the disposition to assume that a general principle can safely be applied to a particular case without careful analysis and discrimination, both as to the scope and limits of the principle and as to the elements of fact involved in the case. No suggestions, however, as to analytical methods will be of substantial service without that good judgment, both of affairs and of men, which comes from sound common sense applied to the technical knowledge of authorities or of astuteness or fertility in resources of practice will compensate for the lack of well balanced good sense. System of some kind in dealing with every litigation or every title to be examined is requisite. Any system is better than no system. The student should learn to know where to begin and when he has covered the ground. Almost every case brought to the attention of the lawyer is like a chain which can be no stronger than the weakest link, and he must learn the art of linking not at haphazard at one link or another, as it may strike his attention, but proceed systematically from one end to the other, testing every point. Long experience enables gifted counsel to acquire a sort of intuition by which, almost at a glance, the finger is put upon a crucial question; but the art of acquiring this ability, so far as it can be acquired, is in early finding and adopting some system of which examination and preparation may be methodically applied."

—*Letter to N. Y. Herald, March 8, 1891. Mr. Austin Abbott is America's greatest legal writer.*



## WENDELL PHILLIPS (1811-1884), Massachusetts

### AGITATION

"If the Alps, piled in cold and still sublimity, be the emblem of Despotism, the ever restless ocean is ours, which girt within the eternal laws of gravitation is pure only because never still."

—*Wendell Phillips—From Speech on "Public Opinion."*

JOHN MCSWEENEY: "John McSweeney's arguments, in quality, take rank with some of the great historic jury efforts."—*W. Phillips.*

### SIR ROBERT PEEL AND DANIEL WEBSTER

"Take Sir Robert Peel and Daniel Webster as measures and examples; two great men, remarkably alike. Neither of them ever had an original idea. (Laughter.) Neither kept long any idea he borrowed. Both borrowed from any quarter, high or low, north or south, friend or enemy. Both were weathercocks, not winds; creatures, not creators. Yet Peel died England's idol—the unquestioned head of the statesmen of the age; Webster, the disgraced and bankrupt chief of a broken and ruined party. Why? Examine the difference. Webster borrowed free trade of Calhoun, and tariff of Clay; took his constitutional principles from Marshall, his constitutional learning from Story, and his doctrine of treason from George Ticknor Curtis (laughter); and he followed Channing and Garrison a little way, then turned doughface in the wake of Douglas and Davis (applause and a few hisses); at first, with Algernon Sidney (my blood boils yet as I think how I used to declaim it), he believed the best legacy he could leave his children was free speech and the example of using it; then of Preston S. Brooks and Legree he took lessons in smothering discussion and hunting slaves. In 1820, when the world was asleep, he rebuked the slave-trade; in 1850, when the battle was hottest, he let Everett omit from his works all his best anti-slavery utterances."

—*From lecture on 'Idols,' Boston, Oct. 4, 1859.*

### DISUNION

"Mr. Seward says, 'The first object of every human society is safety;' I think the first duty of society is *justice*. Alexander Hamilton said, 'Justice is the end of government. It is the end of civil society.' If any other basis of safety or gain were honest, it would be impossible. 'A prosperous iniquity,' says Jeremy Taylor, 'is the most unprofitable condition in the world.' The nation which in moments when great moral questions disturb its peace consults first for its own safety is atheist and coward, and there are three chances out of four that it will end by being a knave. We were not sent into the world to plant cities, to make Unions or save them. Seeing that all men are born equal, our first civil duty is to see that our laws treat them so. The convulsion of this hour is the effort of the nation to do this, its duty, while politicians and parties strive to balk it of its purpose. The nation agonizes this hour to recognize man as man, forgetting color, condition, sex and creed. Our Revolution earned us only *independence*. Whatever our fathers meant, the chief lesson of that hour was that America belongs to America. That generation learned it thoroughly; the second inherited it as a prejudice; we, the third, have our bones and blood made of it. When thought passes through purpose into character, it becomes the unchangeable basis of national life. That Revolutionary lesson need never be learned



again, and will never die out. Let a British fleet, with admirals of the blue and red, cover our Atlantic coast, and in ten days Massachusetts and Carolina will stand shoulder to shoulder; the only rivalry who shall die nearest the foe."

—*From a lecture at Music Hall, Boston, Jan. 20, 1861.*

### CIVILIZATION PRODUCES WANT

"It is enough to state the general principle, that civilization produces want. Wants awaken intellect. To gratify them disciplines intellect. The keener the want, the lustier the growth. The power to use new truths in science, new ideals in morals or art, obliterates rank, and makes the lowest man useful or necessary to the State. Popes and kings no longer mark the ages; but Luther and Raphael, Fulton and Faust, Howard and Rousseau. A Massachusetts mechanic, Eli Whitney, made cotton king; a Massachusetts printer, William Lloyd Garrison, has undermined its throne. Thus civilization insures equality. Types are the fathers of democrats."

—*'Progress'—a lecture in Music Hall, Boston, Feb. 17, 1861.*

### THE LOST ARTS

"I perhaps might venture to claim that it was a medicine for what is the most objectionable feature of our national character, and that is self-conceit—an undue appreciation of our achievements, of our inventions, of our contributions to popular comfort and of our place, in fact, in the great procession of the ages. We seem to imagine that whether knowledge will die with us or not, it certainly began with us. We have a pitying estimate, a tender pity for the narrowness, ignorance and darkness of the bygone ages. We seem to ourselves not only to monopolize, but to have begun the era of light. In other words, we are all running over with a fourth of July spirit of self-conceit. I am often reminded of the German whom the English poet Coleridge met at Frankfort. He always took off his hat with profound respect when he ventured to speak of himself. It seems to me the American people might be painted in the chronic attitude of taking off its hat to itself, and therefore it can be no waste of time with an audience in such a mood to take their eyes for a moment from the present civilization and guide them back to the earliest possible era that history describes for us; if it were only for the purpose of asking whether we boast on the right line. I might despair of curing us of the habit of boasting, but I might direct it better!

"Well, I have been criticised, year after year, for this endeavor to open up the claims of old times. I have been charged with repeating useless fables with no foundation. Today I take the mere subject of glass. This material, Pliny says, was discovered by accident: some sailors, landing on the eastern coast of Spain, took their cooking utensils and supported them on the sand by the stones that they found in the neighborhood; they kindled their fire, cooked the fish, finished the meal, and removed the apparatus, and glass was found to have resulted from the niter and sea sand, vitrified by the heat."

—*Delivered by Wendell Phillips, in Steinway Hall, N. Y.*



C. F. M. PICKARD (1868- ), Washington

THE SAME

(Chaplains of every faith who ministered to the dying virtually obliterated denominational lines on the battlefields of France).

“Hank Jones belonged to the Y. M. C. A.  
Tim Burke to the K. of C.  
Abe Meyer grew in the Ghetto way,  
Where his race, at least, was free.  
These marched away with a private's rank,  
To a Hell of blood and fire;  
Tim was in front, with Yankee Hank,  
And both were with Abe Meyer.  
Each with his shrine and a different creed;  
All methods of worship true,  
But they fought as one for the world's great need,  
And the old 'Red, White and Blue.'  
They messed together, and hand-to-hand  
With hearts that beat as one.  
They marched together to 'No Man's Land,'  
To grapple the hideous Hun.

“Their altar rails were far apart,  
On methods they couldn't agree;  
But they took their place with a fighting heart,  
To battle for you and me.  
Each heard the prayer in that boom and blare  
Of minister, rabbi or priest.  
And they stood up square, they did their share  
To strangle the Berlin beast.

“The 'gas' got Abe—then Hank and Tim  
Heard the Chaplain pray for the Jew;  
Then Tim went 'West;' Hank's eyes were dim,  
But a rabbi prayed Tim through.  
Hank went 'over the top' to the glory side,  
But he did not die in sin;  
For he was absolved the night he died,  
By kind-faced Father O'Flynn.

“The God that welcomed and met all three  
Where the souls of brave men stay,  
Was the God of Abe, and Tim's K. of C.,  
And Hank's Y. M. C. A.”

—Written by Mr. Pickard, Nov. 19, 1918, formerly a Kansas City, Mo., lawyer, now of Spokane, Wash.



## EDWARDS PIERREPONT (1817-1892), New York

### DANCING

"You may be invited to a ball or a dinner, because you dance or tell a story, but no one since Queen Elizabeth's time has been made a cabinet minister or a Lord Chancellor for such reasons."

—*Edward S. Pierrepont—Advice to son upon entering Oxford.*

Born at North Haven, Conn.; graduated at Yale, 1837; and after practicing law a few years at Columbus, O., settled in N. Y., 1845, where he soon took high rank at the bar. He was judge of the superior court, 1857-60, member of the State constitutional convention, 1867, district attorney of the U. S., 1867-70, attorney-general of the U. S., 1875-76, and minister to Great Britain, 1876-77. He was a member of the committee of seventy which fought the "Tweed ring."

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## WILLIAM ALLEN BUTLER—NO ROOM FOR QUACKS IN THE LAW

"There is no calling in which charlatanism and quackery or anything merely adventitious counts for as little as in the legal profession, or in which real merit is surer in the end of its final reward. No young man of fair natural ability, possessing good health, sound principles, a willingness to work and the faculty for availing of opportunity need be alarmed at the number of lawyers with whom he must compete. If the requirements are severe the chance of success is so much the better to the aspirant who can meet them. There is, however, a tendency to overestimate the legal profession as a means of acquisition, and greatly to exaggerate the gains of lawyers. They are given a financial rating for which there is no warrant. A professional income may be the equivalent in figures of the interest on a very considerable sum of money, but in reality is all capital, largely consumed in the expense of earning it and in the support it affords to the earner and his family, if he has one. Professional men are too often expected and too often undertake to compete in style of living and scale of expenditures with business men whose resources survive their death or outlast their ability to work, while a lawyer's gains represent nothing more stable than his individual capacity for labor. All this indicates a false standard in regard to this as in so many incidents of our social economy, to be gradually corrected by common sense in the profession and outside of it."—*To N. Y. Herald, March 8, 1891.*

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## BURKE

"When I look into my own mind and find its best lights and principles fed from that immense magazine of moral and political wisdom which he has left as an inheritance to mankind for their instruction, I feel myself repelled, by an awful and grateful sensibility, from petulantly approaching him."—*Erskine on "The Present War with France."*



## WILLIAM PINKNEY (1764-1822), Maryland

### CONSTRUCTIVE TREASON

"Gracious God! In the nineteenth century to talk of constructive treason! Is it possible that to this favored land—this last asylum of liberty—blest with all that can render a nation happy at home and respectable abroad—this should be law? No, I stand up as a man to rescue my country from this reproach. (Judge Duvall, one of the judges before whom the argument was made, had decided that Hodge's delivery of prisoners to the enemy was treason. Mr. Pinkney appeared for the accused, Mr. Hodges.) I say there is no color for this slander upon our jurisprudence. Had I thought otherwise, I would have asked mercy, not for law. I would have sent my client to the feet of the President, not have brought him, with bold defiance, to confront his accusers, and demand your verdict. He could have had a *nolle prosequi*. I confirmed him in his resolution not to ask it. Under these circumstances, I may claim some respect for my opinion. My opportunities for forming a judgment upon this subject, I am compelled to say, by the strange turn which this cause has taken, are superior to those of the Chief Justice. I say nothing of the knowledge which long study and extensive practice enabled me to bring to the consideration of the case. I rely upon this: my opinion has not been hastily formed since the commencement of this trial. It is the result of a deliberate examination of all the authorities, of a thorough investigation of the law of treason in all its forms, made at leisure and under a deep sense of a fearful responsibility for my client. It depends upon me whether he should submit himself to your justice, or use with the Chief Magistrate the intercession of the grand jury, which could not have failed to have been successful. You are charged with his life and honor, because I assured him that the law was a pledge for the security of both. I declared to him that I would stake my own life upon the safety of his; and I declare to you now, that you have as much power to shed the blood of the advocate as to harm the client whom he defends. \* \* \* The opinion which the Chief Justice has just delivered is not, and I thank God for it, the law of the land."

—*Extract from Pinkney's argument in U. S. v. Hodges, 2 Wheeler's Cr. Cases, 477, in United States Circuit at Baltimore, 1815. Marshall pronounced Pinkney the greatest legal reasoner he ever heard; "Led away the understanding," said Judge Story; "Has enlarged my admiration of the capacity of the human mind," added Rufus King.*

### THE WAR OF 1812

"As the war was forced upon us by a long series of unexampled aggressions, it would be absolute madness to doubt that peace will receive a cordial welcome, if she returns without ignominy in her train, and with security in her hand. The destinies of America are commercial, and her true policy is peace; but the substance of peace had, long before we had, long before we were roused to a tardy resistance, been denied to us by the ministry of England; and the shadow which had been left to mock our hopes and to delude our imaginations resembled too much the frowning spectre of war to deceive anybody. Every sea had witnessed, and continued to witness, the systematic persecution of our trade and the unrelenting oppression of our people. The ocean had ceased to be the safe highway of the neutral world; and our citizens traversed it with all the fears of a benighted traveler, who trembles along a road beset with banditti, or infested by the beasts of the forest. The government



thus urged and goaded drew the sword with visible reluctance; and true to the pacific policy which kept it so long in the scabbard it will sheathe it again when Great Britain shall consult her own interest by consenting to forbear in future the wrongs of the past."

### INTENSE APPLICATION AND DESIRE FOR APPLAUSE

"Pinkney's main qualities seem to have been his power of intense application, and his desire for applause. It was his intense application to his law books that made him the most learned man of his time, both as to 'black-letter' common law, present day commercial law, and international and public law. It was his intense application to the study of the English language, including the classical sources from which so much of our English is drawn, that gave him his copious diction and appropriate use of figures of speech, and made him, perhaps, the most eloquent man of his age. These are the qualities that make him show up behind the haze of the intervening years almost more than human."

—*Alfred Salem Niles, 2 'Great Am. Lawyers,' 214.*

### EGOTISTIC

"He would never allow that anyone was his superior in anything; in field sports, in music, in drawing, and especially in oratory, in which his great ambition rested. He considered the late Chief Justice Parsons and himself the only men in America who had thoroughly studied and understood 'Coke on Littleton.' "—*Niles, 2 'Great American Lawyers,' 215.*

### JUDGE TANEY'S ESTIMATE

"Pinkney was a profound lawyer in every department of the science, as well as a powerful and eloquent debater. He always saw the strongest point of the case, and he put forth his whole strength to support it, and enforced it by analogies from other branches of the law. He never withdrew the attention of the Court from the point by associating with it more questionable propositions obviously untenable. He seemed to regard such arguments as evidence of a want of legal knowledge of the speaker; and when replying to them he took particular pleasure in assailing weaker points and dwelling on them by a tone and manner that sometimes made the adversary ashamed of them, and sometimes provoked his resentment."—*Roger B. Taney, in 'Tyler's Memoirs,' 69.*

### ESTIMATE OF RUFUS CHOATE

"Pinkney's great original endowment was his legal mind. He had as fine a legal head as was ever grown in America, and perhaps, some would say the fullest and of the broadest dimensions. His rhetoric was all put on. It was got up late in life, and was a magnificent and labored costume, solely created to display his law. He is always more or less stilted and far-fetched; but he made his bursts tell; they were successful then, whatever we may think in now reading them; and success is the true test of oratoric composition. There were, however, in his works two distinct strata; one his diction, his varied, comprehensive, admirable and discriminating words; and his figures and chaotic confusion of metaphor. The former, his words, he learned by a most perfect study of literature and the best speakers of England, and I hold his diction to be in the first rank for the purposes of the orator. (He coned over dictionaries, too, most arduously.) But the latter, his figures, his Minerva brandishing the spear, his Juno, etc., etc., I never thought much of. Upon the case of the *Nereide*, though, I think the Supreme Court were clearly wrong, and he as clearly right."—*Parker's Reminiscences, 256.*



## HEAD OF AMERICAN BAR TILL DEATH

"Pinkney was the undisputed head of the Bar until his death, in 1822. Thereafter, Webster overshadowed all others in the importance of the cases argued, and in the mastery of the great principles of constitutional law; although he had close rivals in Wirt, and Littleton Walker Tazewell, of Virginia, and in the number of cases, he was excelled by David B. Ogden of New York."—*Warren's Hist. Am. Bar*, 367-8.

## FITTED HIS CARRIAGE WITH BOOKS

"In order to save time during his long journeys, he had his traveling carriage fitted up with book-shelves, after the manner of Napoleon in his campaigns, and always carried with him a select legal library. He would enter his carriage at Baltimore, and while driving to Annapolis, prepare his case and be ready to argue it before the Court of Appeals as soon as he arrived. Having finished his business at Annapolis, he would drive to Washington, studying all the way, and be ready to argue his case before the Supreme Court."—*Eugene L. Didier, 3 Green Bag*, 313.

## JAMES FORD RHODES' ESTIMATE

"Pinkney has served his country abroad with ability and honor, but had won his greatest renown at the bar. When Daniel Webster came to Washington to practice in the Supreme Court, Pinkney was the acknowledged leader of American lawyers, and this surpassing eminence he held to the day of his death, although his position began to be shaken after the Boston lawyer had made the great argument in the Dartmouth College case. Perhaps a perception of Webster's growing power and future rank led Pinkney to say that he did not desire to live a moment after the standing he had acquired at the bar was lost, or even brought into doubt or question. (Wheaton's *Life of Pinkney*, 179.) This great lawyer was as vain of a handsome face, accomplished manners, and an elegant dress as he was proud of his legal acumen. Clad in the extreme of fashion, he preferred to be regarded an idle and polished man of society rather than to be looked upon as what he really was, an unwearied student. ('Pinkney, a large, handsome man and remarkable for his somewhat foppish dress, wearing a white waistcoat, and white top-boots,' 2 '*Recollections of a Lifetime*,' by S. G. Goodrich, 399.) Always preparing his speeches with the utmost care, writing out the showy passages and learning them by heart. ('A member of Monroe's cabinet told me that he heard Pinkney, about 5 o'clock of a winter morning, reciting and committing to memory, in his room, the peroration of a plea, which he heard delivered the same day before the Supreme Court,' '*Goodrich's Recollections*,' 398, note.) He rehearsed in private the appropriate gestures and rhetorical points he sought to convey the notion that he spoke on the spur of the moment."—*1 Jas. Ford Rhodes' Hist. U. S.*, 34.

## THE TEETOTUM OF TIME

"Again, if we are to entertain these hopeful abstractions, and to resolve all establishments into their imaginary elements in order to recast them upon some Utopian plan, and if it be true that all the men in a republican government must help to wield its power and be equal in rights, I beg leave to ask the honorable gentleman from New Hampshire, and why not all the women? They, too, are God's creatures, and not only very fair, but very rational creatures; and our great ancestor, if we are to give credit to Milton, accounted the 'wisest, virtuest, discreetest, best;' although to say the truth, he had but one specimen from which to draw his conclusion, and possibly if he had had more would not have



drawn it at all. They have, moreover, acknowledged civil rights in abundance, and, upon abstract principles, more than their masculine rulers allow them in fact. We have all read of Elizabeth of England, of Catherine of Russia, of Semiramis, and Zenobia, and a long list of royal and imperial dames, about as good as an equal list of royal and imperial lords. Why is it that their exclusion from the power of popular government is not destructive of its republican character? I do not address this question to the honorable gentleman's gallantry, but to his abstraction and his theories and his notions of the infinite perfectability of human institutions, borrowed from Godwin and the turbulent philosophers of France. For my own part, sir, if I may have leave to say so much, in the presence of this mixed, uncommon audience, I confess I am no friend to female government, that is we have all of us, as I suspect, at some time or other experienced. But if the ultra republican doctrines which have now been broached should ever gain ground among us, I should not be surprised if some romantic reformer, treading in the footsteps of Mrs. Wollstonecraft, should propose to repeal our republican Salique Law, and claim for our wives and daughters a full participation in political power, and to add to it that domestic power, which in some families, as I have heard, is as absolute and republican as any power can be."

—*From Speech on the Missouri Compromise, in U. S. Senate, 1820.*

#### GEORGE TICKNOR'S CHARACTERIZATION

"After a few moments, pause they proceeded in the case in which Dexter, Pinkney, and Emmett were counsel. It was a high treat, I assure you, to hear these three great lawyers in one cause. Pinkney opened it as junior counsel to Emmett; and it was some time before I was to be reconciled to his manner as to be able to attend properly to his argument. His person, dress, and style of speaking are so different from anything which I ever saw before that I despair of being able to give you an idea of him by description or comparison.

"You must imagine, if you can, a man formed on nature's most liberal scale, who, at the age of fifty, is possessed with the ambition of being a pretty fellow, wears corsets to diminish his bulk, uses cosmetics, as he told Mrs. Gore, to smooth and soften his skin growing somewhat wrinkled and rigid with age, and dresses in a style which would be thought foppish in a much younger man. You must imagine such a man standing before the gravest tribunal in the land, and engaged in causes of the deepest moment; but still apparently thinking how he can declaim like a practiced rhetorician in the London cockpit, which he used to frequent. Yet, you must at the same time, imagine his declamation to be chaste and precise in its language, and cogent, logical, and learned in its argument, free from the artifice and affectation of his manner, and, in short, opposite to what you might fairly have expected from his first experience and tones. And when you have compounded these inconsistencies in your imagination and united qualities which on common occasions nature seems to hold asunder, you will, perhaps, begin to form some idea of what Mr. Pinkney is.

"He spoke about an hour, and was followed by Mr. Dexter who, with that cold severity which seems peculiarly his own, alluded to the circumstances of his being left alone (his coadjutor not having come) to meet two such antagonists; then went on to admit all that Mr. Pinkney had said and to show that it had nothing to do with the case at hand, and finally concluded by setting up an acute, and, as I suppose it will prove, a successful defense.

"Mr. Emmett closed the cause in a style different from either of his predecessors. He is more advanced in life than they are; but he is yet older in sorrows than in years. There is an appearance of premature age in his person, and of a settled melancholy in his countenance, which



may be an index to all that we know of himself and family. At any rate, it wins your interest before he begins to speak. He was well possessed of his cause, and spoke with a heartiness which showed that he desired to serve his client rather than to display himself. He was more bold and free in his language, yet, perhaps, equally exact and perspicuous; and if Mr. Pinkney was more formally logical, and Mr. Dexter more coldly cogent, Mr. Emmett was more persuasive. When he had finished, I was surprised to find that he had interested me so much that, if he had not stopped, I should have lost my dinner."

—*From letter of Geo. Ticknor, from Wash., D. C., Feb., 1815.*

### WM. PINKNEY, A GREAT REASONER IN THE LAW

"Pinkney's favorite mode of reasoning was from the analogies of the law, tracing up its technical rules to their original principles and historical sources. He followed the precept given by Pliny, and *sowed his arguments broad-cast*, amplifying them by every variety of illustration of which the subject admitted, and deducting from them a connected series of propositions and corollaries, gaining in beautiful gradations on the mind and linked together by an adamant chain of reasoning. Of the extent and solidity of his legal attainments, it will be difficult to speak in adequate terms, without the appearance of exaggeration. He was profoundly versed in the ancient learning of the common law, its technical peculiarities and feudal origin. Its subtle distinctions and artificial logic were familiar to his early studies and enabled him to expound with admirable force and perspicuity the rules of real property. He was familiar with every branch of commercial law, and superadded, at a later period of his life, to his other legal attainments, an extensive acquaintance with the principles of public law and the practice of the prize courts. In his legal studies he preferred the original text writers and reporters to all these digests, abridgments, and elementary treatises which lend so many convenient helps and facilities to the modern lawyer, but which he considers as adapted to form sciolists and to encourage indolence and superficial habits of investigation. His favorite law book was Coke-Littleton, which he had read many times. Its principal texts were treasured up in his memory and his arguments at the bar abounded with the perpetual recurrences to the principles and analogies drawn from the rich mine of common-law learning."

—6 *Jared Sparks' American Biography*, 72-3.

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### SURETYSHIP

"Almost all who sign as surety," says Chief Justice Appleton, of Maine, "have occasion to remember the proverb of Solomon: 'He that is surety for a stranger, shall smart for it, and he that hateth suretyship is sure.' But they are nevertheless held liable upon their contracts, otherwise there would be no smarting, and the proverb would fall."

—*Mayo v. Hutchinson*, 57 Me., 547.



## WILLIAM C. PLUNKET (1764-1854), Ireland

### THE STATUTES OF LIMITATION

"If time destroys the evidence of title, the laws have wisely and humanely made length of possession a substitute for that which has been destroyed. He comes with his scythe in one hand to mow down the muments of our rights; but in his other hand the law-giver has placed an hour-glass, by which he metes out incessantly those portions of duration which render needless the evidence that he has swept away."

Was. Attorney-General for Ireland, 1805; member of the English House of Commons, 1807; again as a member for Dublin University, 1812-22; Chief-Justice of Ireland, 1827; Lord Chancellor of Ireland, 1830-41.

Plunket was a great chancery lawyer, holding the same position in Ireland that Romilly held in England.

### ANTI-UNIONIST

"For my part, I will resist it (the Union) to the last gasp of my existence, and with the last drop of my blood; and when I feel the hour of my dissolution approaching, I will, like the father of Hannibal, take my children to the altar, and swear them to eternal hostility against the invaders of their country's freedom."—*In the Union Debates, 1800.*

### THE CATHOLIC CLAIMS

"Walking before the sacred images of the illustrious dead, as in a public and solemn procession, shall we not dismiss all party feeling, all angry passions, all unworthy prejudices? I will not talk of past disputes; I will not mingle in this act of national justice anything that can awaken personal animosity."

### ADDRESSING SPEAKER ABBOTT

"But you, sir, while you were binding the wreath round the brow of the Conqueror (the Duke of Wellington), assured him that his victorious followers must never expect to participate in the fruits of their valor, but that they who had shed their blood in achieving the conquest were the only persons who were never to share the profits of success in the rights of citizens."

—*On the Catholic Question, one of his incidental sarcasms, in 1814.*

### PLUNKET'S STANDING AT THE BAR

"Of all the eminent lawyers I have heard, Plunket seemed to me to be the most admirably qualified for the department of the profession in which he shines. His mind is at once subtle and comprehensive: his learning clear, copious and condensed; his powers of reasoning are altogether wonderful. Give him the most complicated and doubtful case to support, with an array of apparently hostile decisions to oppose him at every step—the previous discussion of the question has probably satisfied you that the arguments of his antagonists are neither to be answered nor evaded; they have fenced round the right of their clients with all the great names in equity—Hardwicke, Camden, Thurlow, Eldon. Mr. Plunket rises, you are deeply attentive; rather from curiosity



to witness a display of hopeless dexterity than from any uncertainty about the event. He commences by some general undisputed principle of law that seems, perhaps, at first view, not to bear the remotest relation to the matter in controversy; but to this he appends another and another and another, until by a regular series of connected propositions he brings it down to the very point before the court; and insists, nay demonstrates, that the court cannot decide against him without violating one of his own most venerated maxims. Nothing can be more masterly than the manner in which all this is done. \* \* \* But Lords Hardwicke, Thurlow, Camden, Eldon, etc., are said to be against him. The advocate accordingly proceeds to examine each of these authorities in detail; he analyses their language; by distinctions that seem natural and obvious but which really are most subtle, he shows how capable it is of various interpretations; he confronts the construction contended for by conflicting decisions of the same judges on other and similar occasions; he points out unsuspected anomalies that would arise from adopting the interpretation of his adversaries, and equally unexpected accordances with general principles that would follow his own. He thus goes on until, by reiterated processes of matchless sagacity, he has either neutralized or brought over to support himself all the authorities upon which his opponents most firmly relied; and he sits down, leaving the court, if not a convert to his opinion, at least grievously perplexed to detect and explain the fallacies upon which it rests."

—1 *Shiel's Sketches of the Irish Bar*, 103-6.

#### MACKINTOSH ON PLUNKET'S ORATORY

"The late Sir James Mackintosh, who had heard all the great orators, from Pitt, Sheridan, Burke, and Fox, to Brougham, Canning, Shiel, and Macaulay, repeatedly said that if Plunket had been regularly trained in a British House of Commons he would have been the greatest speaker there that he had ever remembered."

—1 *Shiel's 'Sketches of the Irish Bar,'* 111.

#### ON THE IRISH PARLIAMENT

"Sir, I, in the most express terms, deny the competency of Parliament to abolish the Legislature of Ireland. I warn you, do not dare to lay your hand on the Constitution. I tell you that if, circumstanced as you are, you pass an act which surrenders the government of Ireland to the English Parliament, it will be a nullity, and that no man in Ireland will be bound to obey it. I make the assertion deliberately, I repeat it, and I call on any man who hears me to take down my words; you have not been elected for that purpose; you are appointed to make *laws*, and not *legislatures*; you are appointed to *act under* the Constitution, not to *alter* it; you are appointed to *exercise* the functions of legislators, and *not to transfer them*; and if you do so, your act is a *dissolution* of the government; you resolve society into its original elements, and no man in the land is bound to obey you.

"Sir, I state doctrines which are not merely the opinions of the ablest men who have written on the science of government, but I state the practice of our Constitution, as settled at the era of the Revolution, and I state the doctrine under which the House of Hanover derives its title to the throne. Has the King a right to transfer his crown? Is he competent to annex it to the crown of Spain, or of any other country? No, but he may abdicate it; and every man who knows the Constitution knows the consequence, the right reverts to the next in succession; if they all abdicate, it reverts to the people. The man who questions this doctrine in the same breath must arraign the sovereign on the throne as an usurper. Are you competent to transfer your legislative rights to the French Council of five-hundred? Are you competent to transfer them to the British



Parliament? I answer, No. When you transfer you abdicate, and the great original trust reverts to the people from whom it issued. Yourself you may extinguish, but Parliament you cannot extinguish; it is enthroned in the hearts of the people; it is enshrined in the sanctuary of the Constitution; it is as immortal as the Island which it protects. As well might the fanatic suicide hope that the act which destroys his miserable body would extinguish his eternal soul. Again, I therefore warn you, do not dare to lay your hands on the Constitution; it is above your power. Sir, I do not say that the Parliament and the people by mutual consent and co-operation may not change the form of the Constitution. Whenever such a case arises it must be decided on its own merits, but that is not this case. If government considers this a reason peculiarly fitted for *experiments* on the Constitution, they may call on the people. I ask you, are you ready to do so? Are you ready to abide the event of such an appeal? What is it you must, in that event submit to the people? Not this particular project; for if you dissolve the present form of government, they become free to choose any other; you fling them to the fury of the tempest; you must call on them to unhouse themselves of the established Constitution, and to fashion to themselves another. I ask again, is this the time for an experiment of that nature?

"Thank God, the people have manifested no such wish, so far as they have spoken, their voice is decidedly against this daring innovation. You know that no voice has been uttered in its favor, and you cannot be infatuated enough to take confidence from the silence which prevails in some parts of the kingdom; if you know how to appreciate that silence it is more formidable than the most clamorous opposition. You may be rived and shivered by the lightning, before you hear the peal of the thunder! But, sir, we are told that we should discuss this question with calmness and composure. I am called on to surrender my birthright and my honor, and I am told I should be calm, composed.

"National pride! Independence of our country! These, we are told by the Minister, are only vulgar topics, fitted for the meridian of the mob, but unworthy to be mentioned in such an enlightened assembly as this; they are trinkets and gewgaws fit to catch the fancy of childish and unthinkable people like you, sir, or like your predecessor in that chair, but utterly unworthy the consideration of this House, or of the matured understanding of the noble lord who condescends to instruct it! Gracious God, we see a Perry reascending from the tomb, and raising his awful voice to warn us against the surrender of our freedom; and we see that the proud and virtuous feelings which warmed the breast of that aged and venerable man, are only calculated to excite the contempt of this young philosopher, who has been transplanted from the nursery to the cabinet, to outrage the feelings and understanding of the country."

### THE COURT "SITS" AND THE ACTION "LIES"

"Plunket, while pleading one day, observing the hour to be late, said it was his wish to proceed with the trial if the jury would 'set.' 'Sit,' said the judge, correcting him, 'not set; hens set.' 'I thank you, my Lord,' was the reply. Shortly after that, the judge had occasion to observe 'that if such were the case, he feared the action would not 'lay.' 'Lie, my Lord,' said the barrister, 'not lay; hens lay.'"

—*Frederick Saunders, 'Salad for the Solitary and the Social,' 430.*

### "NOTHING TO DO," AND EQUAL TO IT

After quitting the Common Pleas, in 1827, to take the Great Seal, Plunket was told that his successors had little or nothing to do. "Well," said he, "they are equal to it."



## WOULDN'T THROW UP SEALS

On his enforced retirement in 1841, to make way for Lord Campbell, a great storm arose on the day of his successor's expected arrival, a friend said, how sick of his promotion the voyage must have made him. "Yes," said Plunket, with a sardonic smile, "but, *it won't make him throw up the seals.*"

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## GREATNESS OF THE BIBLE

"The Bible is a book which in spiritual power has no parallel in any literature with which I have had any acquaintance. Nowhere have I found such brief and comprehensive summary of all moral obligations as in the Ten Commandments; nowhere such a hymn of praise to the Creator as in the first chapter of Genesis; nowhere such a parable of human frailty and folly as in the third chapter; nowhere such a vision of God in nature as in the 104th Psalm; nowhere such a vision of God in human experience in God's forgiving love as in the 55th chapter of Isaiah."

—*Lyman Abbot's 'Reminiscences', (1915), 448-9.*

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## WHAT THE BIBLE IS

"The Bible is not a book but a library; it took, in its formation over a thousand years; the books in which it was composed were written in different languages, by men of different temperaments, but lived centuries apart; in studying and teaching it one must take account of the time in which, the people to which, and the temperament of the men of whom each book or teaching was uttered. The legal and historical studies had further prepared me for the view of the Bible which now modern scholarship generally accepts. History is always composed of pre-existing materials, and these materials are often woven by the writer into his narrative. It was not unnatural to suppose that the Bible histories were composed in the same manner, and that there incorporated in them, along with documents and well-attested legends, some popular tales and current folk-lore. I had learned from Sir Henry Maine that the origin of law is a general custom; that custom is formulated in specific decrees, imperial or legislative; then the decrees are organized into a code."

—*Lyman Abbott's 'Reminiscences', 460-1.*

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## LYMAN ABBOTT'S CREED

"I had come to the conclusion that there was no future torment either long or short, that the day of probation was not on this side of the grave but on the other, and that there was no ground in Scripture for the belief that God's mercy for any man ended with his earthly life."

—*Lyman Abbott's 'Reminiscences', 472.*



SIR FREDERICK POLLOCK (1845- ), England

### PHILOSOPHY OF THE LAW

“We have long given up the attempt to maintain that the common law is the perfection of reason. Existing human institutions can only do their best with the conditions they work in. If they can do that within the reasonable margin to be allowed for mistakes and accidents, they are justified in their generalization. Even their ideal is relative. What is best for one race or society, at a given stage of civilization, is not necessarily best for other races and societies at other stages. We cannot say that one set of institutions is in itself better or more reasonable than another, except with reference, express or implied, to conditions that are assumed either to be universal in human societies, or to be not materially different in the particular cases compared. It may perhaps be safe to assume, in a general way, that what is reasonable for Massachusetts is reasonable for Vermont. It would not be safe to assume that everything reasonable for Massachusetts is reasonable for British India, nor, indeed, that within British India what will serve for Lower Bengal will equally well serve for the northwest frontier. The first right of every system, therefore, is to be judged in its own field, by its own methods, and on its own work. It cannot be seen at its best, or even fairly, if its leading conceptions are forced into conformity with an alien mold. A sure mark of the mere handicraftsman is to wonder how foreigners can get on with tools in any way different from his own. \* \* \* Development is a process, and not a succession of incidents. Environment limits and guides the direction of effort; it cannot create the living growth. Hence it seems to follow that a system which is vital and really individual either must be resigned to remain in some measure inarticulate, or must have some account to give of itself that is not merely dogmatic and not merely external history, but combines the rational and the historical element. In other words, its aims are not completely achieved unless it has a philosophy; and that philosophy must be its own.”—*From the Young Man and the Law*, p. 145-6.

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### LORD ELDON'S MOTTO

*Sat cito, si sat bene.* “Quick enough, if safe enough.” This motto was a favorite maxim with Lord Eldon, who says, “In all I have had to do in future life, professional and judicial, I have always felt the effect of this early admonition, on the panels of the vehicle which conveyed me from school, ‘*Sat cito, si sat bene.*’”—*Twiss, ‘Life of Eldon,’ vol. 1, 345.*



## JOHN K. PORTER (1819-1892), New York

### LEGAL TENDER AND MONEY

"The substantial issue is on the right to make of the U. S. a legal tender. A minor issue is raised as to the power of Congress to declare them to be *money*. That is a question of very trivial moment, as without such a declaration they *are* money by the common recognition of all civilized communities. If Congress had failed to make the declaration, the omission would be quite immaterial, as the Supreme Court of the U. S. had held treasury notes to be money, even before they were made a legal tender.

"But on the great question in the case, whether the government can make this money a legal tender, your Honors will not fail to observe that the very term 'legal tender' imports that the subject is one, by the common understanding of mankind, belonging in every sovereignty to the law-making power. It has been recognized as such in every civilized nation. Gold and silver have been a legal tender with us. Not so in Great Britain. There, except for small sums, it is *gold* coin or notes of the Bank of England. Not so in France. There it is *silver* coin and government paper in periods of public exigency. Our first government coinage was copper; of which 300 tons were converted into money, at the mint, during the secretaryship of General Hamilton.

"Doubtless gold and silver and government paper have been generally preferred by the law-making powers of the various modern nations. That this was not always so, even with them, is illustrated by the fact that we have the record in British history of the time when a white woman was money, and when a fair-haired Saxon slave boy was a medium of commercial exchange, and the subject of tender in payment of civil debt; and it is a curious feature of English History, alluded to by Macaulay, that there is no record to be found in the Statutes at large, to this day, of the abolition in that country of the institution of human slavery.

"Whatever, in any country, may happen to be for the time the recognized medium of commercial exchange, whether gold, silver, or government paper, it derives its character as legal tender, not from the material of which it is composed, but from the imprint of the law-making or sovereign power. I may have a chest full of gold bars, but without the stamp of government authority it is not a legal tender in payment of a debt for a loaf of bread. When a penny of Caesar was brought by a disciple to One wiser than man, the inquiry He deemed appropriate was, not what metal is this, but, 'whose image and superscription is this?' It was the recognition by the King of kings, of the authority of human laws, and the stamp of national sovereignty."

—John K. Porter, in *Metropolitan Bank v. Van Dyck*, before the Court of Appeals, at Albany, N. Y. June 27, 1863.

### THE SOVEREIGNTY OF THE NATIONAL GOVERNMENT

"The Federal Government, in its national relations, is invested with the powers of sovereignty. If the Constitution had failed to invest it with these, it would, in the language of Chief Justice Marshall, have been only a 'Splendid bauble.' Mere forms are nothing. Substance is everything. It was said by Napoleon, that 'a throne is a mere block of wood covered with velvet.' A national constitution, which failed to organize a nation, would be even more unmeaning than the throne stripped of its covering."

The above is from Mr. Porter's argument in *Metropolitan Bank v. Van Dyck*, N. Y. Court of Appeals, on the constitutionality of the Legal Tender



Acts, 27 N. Y., 400 June 27, 1863. He was in the Parish Will Case, the Beecher-Tilton case, the Quadruplex telegraph cases, defended Gen. Babcock at St. Louis, Mo., prosecuted Guiteau, for the assassination of President Garfield, refused a \$50,000 retainer from William Tweed.

Says the Albany Law Journal, in 1875: "Evarts, Porter, Beach, combined would make the ideal advocate. If we are ever indicted, we shall retain Evarts as general manager, Porter to sum up to the jury, and Beach to argue the appeal, if we happen to be convicted."

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## ART

"Art appears to me to be one method of giving outward expression to an inward life; philosophy is another method; literature a third; music a fourth and so on. The expert is always interested in the manner in which that life is expressed. If he is a musician, he knows the motifs in the opera, recognizes the fugue in the oratorio, delights in the interweaving of the melodies in the canon; if he is a literatuer, he discerns the structure of the novel, perceives the artistic development of the oration, delights in the rythmical pulse-beats of the poem; if he is a logician, the process by which the philosopher reaches the conclusion interests him, and he rejoices in the strength of the links in the arrangement as an iron-worker might in those of a chain; if he is an artist, what impresses him is the composition, the tone, the color-harmony, and these are equally a delight to him whether the picture is a landscape, or a portrait, or a crucifixion. But the non-expert does not see, or cares little, for these elements; what interests him is the life expressed, not the method of expression. \* \* \* This quality in a picture is what I believe the art critics call 'feeling.' I think most of us who are not critics judge pictures by their 'feeling.' To both the picture brings a message; but the messages are different; to the art critic it speaks of beauty in form and color; to the layman through beauty of form and color it speaks of something else. If its only message is beauty in form and color, it does not speak to him at all."

—Lyman Abbott, *'Impressions of a Careless Traveler'*, 191-4.

Abbott practiced law 6 years in the 50's, with his brothers, Austin and Benjamin. They wrote several law-books under the name of 'Benauly,' Ben(jamin)—Au(stin)—Ly(man), making the combination name, Benauly.—*The Author*.

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## PAST ACTS DO NOT ALWAYS COUNT

Edward Voight, of Wisconsin, member of Congress, had been praising Berger, of Milwaukee, and his friends for supporting the War, etc., when Frank L. Greene, representative of the St. Albans district, Vermont, a veteran of the Spanish War, and former newspaper man, rose and said:

"While you are talking about these good people, and what they did in the past, do not forget that Judas Iscariot was the treasurer of the twelve disciples until he committed his one supreme act of infamy."



## GEORGE D. PRENTICE (1802-1870), Kentucky

### DEATH

"The fiat of death is inexorable. There is no appeal for relief from the great law which dooms us to dust. We flourish and fade as the leaves of the forest. The flowers that bloom, wither and fade in a day, have no frailer hold upon life than the mightiest monarch that ever shook the earth with his footsteps. Generations of men will appear and disappear as the grass and the multitude that throng the world today will disappear as footsteps on the shore. Men seldom think of the great event of death, until the shadow falls across their own pathway, hiding from their eyes the faces of loved ones whose living smile was the sunlight of their existence. Death is the antagonist of all life, and the thought of the tomb is the skeleton of all feasts. We do not want to go through the dark valley although the dark passage may lead to Paradise; we do not want to go down into damp graves even with princes for bed-fellows. In the beautiful drama of *Ion* the hope of immortality so eloquently uttered by the death-devoted Greek, finds deep response in every thoughtful soul. When about to yield his life a sacrifice to fate, his Clemanthe asks if they should meet again, to which he responds, I have asked that dreadful question of the hills that look eternal: of the clear streams that flow forever: of stars among whose fields of azure my raised spirits walked in glory. All are dumb. But as I gaze upon the living face, I feel that there is something in love that mantles through its beauty, that cannot wholly perish. We shall meet, again, Clemanthe!"

Born in Connecticut. Graduated from Brown University (1823); studied law, but never practiced. Moved in 1830 to Ky. and established the Louisville "Courier Journal," of which he resigned the editorship in 1867. His writings were published under the title of "Prenticeana."

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### THE MINISTRY THE GREATEST CALLING

"I might say, that, having been a lawyer, an author, an editor, a secretary, and a pastor, there is no profession which has for me so many attractions as the pastorate. The minister has more intimate friends than the lawyer, the doctor, or the business man; he deals with men and women usually when in their best moods; he preaches to an audience which is friendly and sympathetic and which desires a message if he has one to give; he can have of, if he will, time and opportunity for study of the most fundamental themes, those which concern the building of character, both of the individual and of society; and if he has any personal consciousness of divine companionship, he has in that consciousness the greatest gift to bestow upon his friends which it is possible for one soul to bestow upon another."

—*Lyman Abbott's 'Reminiscences', 278-9.*



## S. S. PRENTISS (1808-1850), Mississippi

### SEARGENT S. PRENTISS' CONTEST FOR HIS SEAT IN CONGRESS

"You sit here twenty-five sovereign States in judgment on the most sacred rights of a sister State, that which is to a State what chastity is to a woman, or honor a man. Should you decide against her, you tear from her brow the richest jewel which sparkles there, and forever bow her head in shame and dishonor. But if your determination is taken, if the blow must fall, if the Constitution must bleed, I have but one request on her behalf to make: When you decide that she cannot choose her own representation, at the same moment blot from the star-spangled banner of this Union the bright Star that glitters to the name of Mississippi, but leave the stripe behind, a fit emblem of her degradation."

—*The peroration of his speech, in contest for his place as Representative over Claiborne, in the 25th Congress. Upon a vote there was a tie, and James K. Polk, the Speaker, voted in the negative, and unseated Prentiss. He announced that he would return to Mississippi and contest the election again. He did so, and was triumphantly elected.*

"As a lawyer Prentiss," says John H. Hall, his biographer, "was a barrister pure and simple. The attorney's work he left to his partners or associates. His specialties were the Law of Real Estate and of Wills. So well did he know the former, that it was the custom to employ him merely to come into court and make a speech. He seldom used books, or prepared for such cases, preferring to hear the evidence in the courtroom and speak from knowledge so obtained. The most astonishing feats of this kind are remembered of him."

—5 *Great American Lawyers*, 416.

### THE COMMON SCHOOL HOUSE

"Behold yon single building near the crossing of the village road! It is small and of rude construction, but stands in a pleasant and quiet spot. A magnificent old elm spreads its broad arms above and seems to lean towards it, as a strong man bends to shelter and protect a child. A brook runs through the meadow near, and hard by there is an orchard, but the trees have suffered much and bear no fruit, except upon the most remote and inaccessible branches. From within its walls comes a busy hum, such as you may hear in a disturbed bee-hive. Now peep through yonder window, and you will see a hundred children, with rosy cheeks, mischievous eyes and demure faces, and engaged, or pretending to be so, in their little lessons. It is the public school, the free, the common school, provided by law; open to all: claimed from the community as a right, not accepted as a bounty. Here the children of the rich and poor, high and low, meet upon perfect equality, and commence under the same auspices the race of life. Here the sustenance of the mind is served up to all alike, as the Spartans served their food upon the public table. Here young Ambition climbs his little ladder, and boyish genius plumes his half-fledged wing. From among these laughing children will go forth the men who are to control the destinies of their age and country; the statesmen whose wisdom is to guide the Senate, the poet who will take captive the hearts of the people and bind them together with immortal song, the philosopher who, boldly seizing upon the elements themselves, will compel them to his wishes, and through new combinations of their primal laws, by some great discovery, revolutionize both art and science."



Prentiss studied the classical dictionary, and said it always came to his rescue. N. Wright said after he was admitted to the bar in 1829, Prentiss soared like an eagle. He was a great reader of biography and history; had little reverence for great men; appeared before the Supreme Court of the U. S. at 25; being fined at one time for fighting in court, he requested that he be not confined in the same cell with his antagonist. His law business at 33, in 1841, was worth at least \$25,000 a year.

### ILLUSTRATING THE UNDERSTANDING

"The truth is, the natural bent of my mind is to dry and pure ratiocination; but finding early that mankind from a petit jury to the highest deliberative assembly are more influenced by illustration than by argument, I have cultivated my imagination in aid of my understanding."

—*Prentiss to Judge Wilkinson.*

### SELF-DEFENSE

"The principles of self-defense, which pervade all animated nature, and act toward life the same part that is performed by the external mechanism of the eye toward the delicate sense of vision—affording it, on the approach of danger, at the same time, warning and protection—do not require that action shall be withheld till it can be of no avail. When the rattlesnake gives warning of his fatal purpose, the wary traveler waits not for the poisonous blow, but plants upon his head his armed heel, and crushes out at once 'his venom and his strength.' When the hunter hears the rustling in the jungle, and beholds the large green eyes of the spotted tiger glaring upon him, he waits not for the deadly spring, but sends at once through the brain of his couching enemy the swift and leaden death. If war was declared against your country by an insulting foe, would you wait till your sleeping cities were wakened by the terrible music of the bursting bomb? till your green fields were trampled by the hoofs of the invader, and made red with the blood of your brethren? No! you would send forth fleets and armies; you would unloose upon the broad ocean your keen falcons; and the thunder of your guns would arouse stern echoes along the hostile coast. Yet this would be but national defense, and authorized by the same great principle of self-protection, which applies no less to individuals than to nations."

—*Defense of Hon. E. C. Wilkinson et al., for murder of Meeks and Rothwell. (Prentiss cleared them all three, and when his case was tried was but 30 years old.)*

S. S. PRENTISS: "His vast learning and iron logic, poetic soul and sublime imagination, musical voice and impassioned eloquence, gave him an irresistible charm before court, jury and people."

—*H. C. McDougall, of K. C. Bar.*

### EXCELLED AS A JURIST

"It will always be a mooted point among Prentiss's friends and admirers as to where his strength chiefly lay. My opinion is that it was a jurist that he mostly excelled; that it consisted in *knowing and being able to show to others what was the law.* I state the opinion with some diffidence, and, did it rest on my own judgment alone, should not hazard it at all. But the eminent Chief Justice of the High Court of Errors and Appeals of Mississippi thought that Prentiss appeared to most advantage before that court; and a distinguished judge of the Supreme Court of Alabama, who had heard him before the Chancellor of Mississippi, expressed to me the opinion that his talents shone most conspicuously in that forum. These were men who could be led from a fair



judgment of a legal argument by mere oratory about as readily as old Playfair could be turned from a true criticism upon a mathematical treatise by its being burnished over with extracts from Fourth-of-July harangues. Had brilliant declamation been his only or chief faculty, there were plenty of his competitors at the bar who by their learning and powers of argument would have knocked the spangles off him, and sent his cases whirling out of court, to the astonishment of hapless clients who had trusted to such fragile help in time of trials."

—*Baldwin's 'Flush Times, etc.'* 202-3.

### ALL ARE BORROWERS

"How dare we claim and enjoy the innumerable benefits derived from our ancestors, if we repudiate the obligations they imposed upon us? Our liberty, our constitution and laws, our social institutions, our very roads and bridges, our public buildings—all won for us by the toil, sacrifices, of blood of our fathers, how can we have the face to appropriate these vast benefits, and not take the incumbrance which they bring with them? In truth, every good thing that we have is mortgaged; earth, sea, and sky—aye, the very air we breathe, as disease and sickness can bear witness. We inherit no blessing, no right or advantage which is not ours in trust which is not linked to some duty."

—*From a Speech at Fayette, on 'Repudiation.'* 2 *'Memoirs of S. S. Prentiss,'* 251.

### THE INFLUENCE OF THE PILGRIMS

"Two centuries and a quarter ago a little tempest-tossed, weather-beaten bark, barely escaped from the jaws of the wide Atlantic, landed upon the bleakest shore of New England. From the deck disembarked a hundred and one care-worn exiles. To the casual observer no event could seem more insignificant. The contemptuous eye of the world scarcely deigned to notice it. Yet the famous vessel that bore Caesar and his fortunes carried but an ignoble freight compared with that of the Mayflower. Her little band of pilgrims brought with them neither wealth nor power, but the principles of civil and religious freedom. They planted them for the first time in the Western Continent. They cherished, cultivated, and developed them to a full and luxuriant maturity; and then furnished them to their posterity as the only sure and permanent foundations for a free government. Upon those foundations rests the fabric of our great Republic: upon those principles depends the career of human liberty. Little did the miserable pedant and bigot who then wielded the scepter of Great Britian imagine that from this feeble settlement of persecuted and despised Puritans, in a century and a half, would arise a nation capable of coping with his own mighty empire in arts and arms."

—2 *'Memoirs,'* 399.

### MUST LIVE IN PAST AND FUTURE

"The human mind cannot be contented with the present. It is ever journeying through the trodden regions of the past, or making adventurous excursions into the mysterious realms of the future. He who lives only in the present is but a brute, and has not attained the human dignity." —*From address on 'Landing of the Pilgrims,' Dec. 21, 1845, at New Orleans.*

### CREDIT AND CONFIDENCE BUILT UP WEST

"It was the twin influence of credit and confidence, especially, which had built up the Great West to its height of power and industrial grandeur."



Armed with these peaceful implements, American industry and enterprise have subdued the wilderness and caused it to *rejoice and blossom as the rose.*"—*2 Memoir,* 167.

### LEARNING OUTSIDE OF BOOKS

"Much of the most valuable learning cannot be obtained from books, but only from observation and experience; mingle, therefore, in society as extensively as your inclinations will permit. Explore the different strata of humanity, and not confine yourself to the surface. The knowledge of mind can no more be obtained from books alone than a knowledge of mineralogy. In both cases you must inspect, not only the precious stones but the coarse and common materials, if you would become an adept in the science. \* \* \* Nothing is more useful to a young man than the expression of his opinions, fresh as they arise. It gives an independence of thought which cannot be obtained except by the habit of frequent expression, either in conversation or writing."—*2 Memoirs,* 122 and 146.

### "EVERY INCH A WHIG"

At one time Prentiss was billed to speak for the Whigs in Nashville, Tenn.; but as was his habit got on a spree, and wandered away from the committee which had him in charge, knowing his weakness. The time came to make the speech—but no Prentiss, and no one else could appease the vast concourse of people—some of whom had come hundreds of miles to hear the celebrated speaker. After an hour or more he was found down in a cow-pen, in a very filthy condition, utterly helpless, and oblivious to the surroundings. It was important that they get him up, and sobered off, so that the great crowd would not be disappointed, as no one but Prentiss could hold such a crowd. They fished him out, cleaned off his clothes as best they could, as he had come over from Natchez, Miss., with no change of suits, walked him around to sober him up, and finally led him upon the improvised stage. He threw his arm around the limb of a tree, with which the platform was surrounded, to balance himself and keep from falling, and thus began:—

"Ladies and gentlemen, though I appear before you clad in the habiliments of Democracy—I am every inch a Whig!"

—*Told to the author of this work by Attorney Oldham, of Houston, Texas, 1896.*

### PRENTISS'S VIEW OF THE LAW

"Prentiss felt that the science of the law itself presented the noblest field of the intellectual faculties, and was deeply sensible of the high responsibilities assumed by all who embark in it as a means of acquiring a livelihood. He treated with scorn the vulgar prejudices against it, founded upon the faults or delinquencies of its unworthy members. It was the profession which, in his opinion, furnished the materials to form the statesmen, the one from which the patriot could provide the most efficient weapons to vindicate the freedom and honor of the country. The boldest and most devoted champions of popular liberty in every civilized age and every civilized clime were to be found in the ranks of the legal profession. He believed that in our own country they afforded one of the strongest bonds of our national Union."

—*Remarks by Judge McCaleb, at meeting of the New Orleans Bar, Nov., 1850.*

### EXTRACT FROM PRENTISS' REPLY TO HARDIN

In the Wilkinson murder case, Ben Hardin had closed his opening speech, many deemed conviction certain. Prentiss, in his reply, tore his



argument and every position advanced to tatters. Turning suddenly upon Hardin, and, stooping his face until it almost touched that of the stern Kentuckian, he hissed forth:—

“Dare you, sir, ask a verdict of such a jury as is here sitting, upon this testimony? You, sir, under the verdict of Nature must soon appear before the awful bar to which you now strive permanently to consign this noble, this gallant young man! Should you succeed, you must meet him there. Could you, in the presence of Almighty God—He who knows the inmost thoughts—justify your work of to-day? His mandate is not to the gibbet. Eternal justice dictates there, whose decrees are eternal. Do you think of this? Do you defy it? If not, if you invoke it, do it through your acts toward your fellowman. Have you to-day done unto this man as you would he should do unto you? I pause for a reply—None. Then shudder and repent, for the record even now is making up against you in that high court from which there is no appeal. You, gentlemen of the jury, are no hired advocates; you are not laboring for blood-money. Though your responsibility to your God is equal to his, you will go to the bar of your Creator with blood—guiltless blood—upon your consciences, on the eventful day, look around you for the accusing spirit of him whom you consigned to the gibbet with a conscious innocence of murder. How will it be with you? (Turning again to Hardin.) Ah! how will it be with you? Still silent. Despite the hardness of his features, mercy like halo sweeps over them, and speaks to you, gentlemen, eloquently: ‘Acquit the accused!’ Look over yonder, gentlemen; within these walls is one awaiting your verdict in tearless agony—she who but for this untoward event would now have been happy as his bride: she who has cheered him in his prison-cell daily with her presence and lovely soul! Hers, not his fate, is in your hands. To him death is nothing: the brave defy death—the good fear it not; then, why should he fear? But she! O God! it is a fearful thing to crush to death with agony the young, hopeful, and loving heart of a virtuous woman. His death is only terrible in her future. Go with her, gentlemen, through life; contemplate the wan features of slow decay: see in these the one eternal, harrowing thought; list to the sigh which rives the heart; watch the tear which falls in secret; see her sink into the grave; then turn away, look up into heaven and from your heart say: ‘O God! I did it.’ You will not; you can not; you dare not.”

—From W. H. Sparks’ *‘Memoirs of Fifty Years,’* 360-1.

### HIS WEAKNESS

“Prentiss was a noble, whole-souled magnanimous man; as pure of honor, as lofty in chivalric bearing as the heroes of romance; but, mixed with these brilliant qualities were vices of mind and habit which those fascinating graces rendered doubly dangerous; for vice is more easily copied than virtue; and in the partnership between virtue and vice, vice subsidizes virtue to its uses. Prentiss lacked regular, self-denying, systematic application. He accomplished a great deal, but not a great deal for his capital: if he did more than most men he did less than the task of such a man: if he gathered much, he wasted and scattered more. He wanted the great and essential element of a true, genuine, moral greatness: there was not—above his intellect—above his bright array of strong powers and glittering faculties—above the fierce hosts of passion in his soul—a *presiding spirit of Duty*. Life was no trust to him: it was a thing to be enjoyed—a bright holiday season—a gala day, to be spent freely and carelessly—a gift to be decked out with brilliant deeds and eloquent words and all gewgaws of fancy—and to be laid down bravely when the evening star should succeed the bright sun, and the dews begin to fall softly upon the green earth. True, he labored more than most men: but he labored as he frolicked—because his mind could not be idle, but



burst into work as by the irrepressible instinct which sought occupation as an outlet to intellectual excitement; but what he accomplished was nothing to the measure of his powers. He studied more than he seemed to study—more probably than he cared to have it believed he studied. But he could accomplish with only a slender effort, the end for which less gifted men must delve, and toil, and slave. But the imitators, the many youths of warm passions and high hopes, ambitious of distinction, yet solicitous of pleasure—blinded by the glare of Prentiss' eloquence, and coruscations of a wit and fancy through which his speeches were borne as a stately ship through the phosphorescent waves of tropical sea, what example was it to *them* to see the renown of the Forum, the eloquence of the Hustings, the triumphs of the Senate associated with the faro-table, the midnight revel, the drunken carouse, the loose talk of the board laden with wine and cards? What Prentiss effected they failed in compassing."

—*Joseph G. Baldwin's 'Flush Times of Alabama and Mississippi,' 218-9.*

### PRENTISS' ELOQUENCE

"His imagination was colored and imbued with the light of the shadowy past, and was richly stored with the unreal but life-like creations which the genius of Shakespeare and Scott had evoked from the ideal world. He had lingered spell-bound among the scenes of mediaeval chivalry. His spirit had dwelt, until almost naturalized, in the mystic dreamland they peopled—among palladins, and crusaders, and knights-templar; with Monmouth and Percy—with Bois-Gilbert and Ivanhoe, and the bold McGregor—with the cavaliers of Rupert, and the iron enthusiasts of Fairfax. As Judge Bullard remarks of him, he had the talent of an Italian improvisatore, and could speak the thoughts of poetry with the inspiration of oratory, and in the tones of music. The fluency of his speech was unbroken—no syllable unpronounced—not a ripple on the smooth and brilliant tide. Probably he never hesitated for a word in his life. His diction adapted itself, without effort, to the thought; now easy and familiar, now stately and dignified, now beautiful and various as the hues of the rainbow, again compact, even rugged in sinewy strength, or lofty and grand in eloquent declamation. His face and manner were alike uncommon. The turn of the head was like Byron's; his face and the action were what the mind made them. The excitement of the features, the motions of the head and body, the gesticulation he used, were all in absolute harmony with the words you heard. You saw and took cognizance of the general effect only; the particular instrumentalities did not strike you; they certainly did not call attention to themselves. How a countenance so redolent of good humor as his at times could so soon be overcast, and express such intense bitterness, seemed a marvel. But bitterness and the angry passions were, probably, as strongly implanted in him as any other sentiments or qualities."

—*Baldwin's 'Flush Times, etc.' 214.*

### READ BIOGRAPHY

"It would be well to read some biography—more especially the lives of the great men of our country—Washington, Franklin, etc. It will raise your ambition, and show you what can be done through industry and exertion, by those whose advantages have not been as good as your own. Success in life depends not so much upon the actual quantity of knowledge which a man possesses, as upon the skill with which he is enabled to bring it to bear upon the affairs in which he may be engaged."



## MOMAN PRUEITT (1872- ), Oklahoma

### DEFIANCE TO A WITNESS WHO THREATENED MURDER

"Here's where I get killed! Measure me now for my coffin. Begin to dig my grave. This bad man Jennings, this outlaw who is capitalizing his every criminal act, who tenders his career as a train robber as his chief asset for citizenship, has threatened to kill any man who dares to call him a liar. I call him a liar. I call him a perjurer. I say he is unworthy the respect of any man. I say this and I say that Al Jennings will not dare to crook his little finger at me. \* \* \* Followed the flag ten thousand miles, did he? Let me tell you, men, he'd follow the bedragled petticoats of a degraded woman ten thousand miles where he'd follow the flag one. This brave soldier, who stood there in that darkened room in a Washington hotel and peeped through a crack at a blind man who had been lured into a lighted room by a woman. A brave soldier he was, peeping through a crack!

"Senator, you were there groping in the darkness of your blindness. You were there, Senator Gore, surrounded by men whose souls were as black as the dregs of hell, and this woman, her record tainted. They'd have you believe she was as pure as a rose opening for the first time to the rising sun; that no rough hands ever soiled her. But has any honest man raised his voice to defend her here? No woman has sat near her throughout the long days of this trial. Her own sex has avoided her. She is a thing apart because of this shameful thing she has done. Even a scarlet woman would not touch the hem of her skirt—this woman whose victim was a blind man. Talk about your Miltons and all the blind men of the ages who have toiled and climbed through eternal night to high achievement. But this man, blind since he was a child, has outdone them all. He has groped his way with unseeing eyes to the floor of the Senate, to a position second only to that of the President, and on those floors he has been able to meet in battle for the rights the giants of debate. And today millions in this Nation are awaiting your verdict. Shall it be a verdict in behalf of conspirators and blackmailers? Shall the millions of this Nation be told that you, by your verdict, have helped these political jackalls pull down this blind man? They are yelping at his flanks like a pack of hungry wolves."

—*Moman Prueitt in defense of Senator Thos. P. Gore, at Oklahoma City, Okla., Feb. 17, 1914.*

(This was a damage suit by Mrs. Bond, who claimed she was drawn into a room and insulted by Senator Gore, in a hotel in Washington, D. C. The verdict was unanimous for the defendant).

### THE PERSONALITY OF PRUEITT

Prueitt is a man with a history written in deeds of Oklahoma, when it was all Indian country, and a man had to be a man to survive. He told the jury, in the above case, that he used to be a bootblack on the streets of Ft. Smith, Arkansas, in the days when it was not uncommon to hang five outlaws from the same gallows in one day. And the story goes that he was a gunman, and that religion touched his heart, tender as that of a girl, and he became an evangelist and preached in all the cow camps up and down the range country. From that he drifted into the practice of law and it was his oratory, his gift of persuasive speaking that made him successful. They send for him to try cases as far away as Seattle.



Dr. Hyde, of Kansas City, tried to get him to defend him for the murder of Thomas Swope. His hair is black as a crow's wing and long. When he first came to Oklahoma, he rode in on a broncho and his black hair fell below his shoulders, but his young wife, one of the prettiest women in Oklahoma, made him shear off a foot of it. When he talks to a jury he takes off collar and tie, rolls down the band of his shirt and pushes his sleeves above his elbows for action. And as he talks he couches like an Indian and walks up and down as a tiger paces its cage, his head thrust forward, his face over the jury-box. It is impossible to convey an impression of his speech by printing the words he says.

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### CHRIST'S INFLUENCE ON ARCHITECTURE, PAINTING, POETRY AND MUSIC

"The effects of Christ's influence on four of the chief expressions of the inner life of man—architecture, painting, poetry and music—is less frequently recognized, but if more indirect is scarcely less apparent. \* \* \* Music as we know it, with melody and harmony, did not exist prior to the Christian era. Its existence is primarily due to an endeavor to find some fitting vocal expression for the emotions which Christianity had called into being. It is the gift of Christianity to mankind. Thus it is that though the Founder of Christianity is not known to have written a single verse or a line of music, or to have drawn a picture, planned an edifice; music, poetry, painting and architecture were all new born in his birth at Bethlehem.

"It may be said with confidence that there would neither be a commercial credit system, nor a post office, nor a public school system, nor a political nor industrial liberty of the world if the world had never known the influence of Jesus Christ, since they never have existed where that influence has not been known. Architecture, literature, painting, music, material progress, political freedom and the social order all owe an inestimable debt to Jesus Christ, and they are all witnesses to the life which he has given to the world. Every material, visible, audible thing in modern life is Christian in so far as it possesses the Christian spirit. The Sistine Madonna is no less truly Christian than the Apostle's Creed; Bach's Passion music is no less Christian than the Catholic Mass or the Puritan prayer meeting; the Salvation Army is no less truly Christian than the church, whatever the history of its orders. There is no more reason why a Christian congregation should be confined to the Apostle's Creed or the Nicene Creed as a statement of its faith than why it should be confined to the Psalms of David in its praises or to a reproduction in its windows of the pictures on the walls of the catacombs."

—Lyman Abbott, *What Christianity Means to Me*, (1921), pp. 74-80.



## RUFUS PERCIVAL RANNEY (1813-1891), Ohio

### THE COMMON LAW

"The foundation principles of the common law have been so built up from the experience of ages, constantly adapting itself to the business and relations of men of society, that we seldom fail to find principles, which if carried to legitimate results, are not altogether sufficient to settle every controversy."

### NAPOLEON

"The Code Napoleon constitutes one of his titles to renown. He originated it, and his vast power and popularity carried it through. He contributed his full share to make it the admirable system of jurisprudence that it is; and if it cannot be truly said that his qualifications for civil administration were equal to his unsurpassed military genius, yet I think it no exaggeration to say that in both respects he deserved to be ranked amongst the first characters of history. In one direction this sober, painstaking and accurate work displays him as vividly as the narrative of the brilliant campaign of Marengo. which immediately preceded this undertaking; and in both, as on many other occasions, the world has seen exhibited that penetrating genius, sound judgment and prompt decision, which so eminently characterizes the man; and above all that wonderful influence over men, which enabled him to bring to his aid the unremitting energies of those best qualified for any given undertaking, without which great results are never attainable."

—*From a letter of Judge Ranney's, Nov. 16, 1898.*

### JUSTICE'S COURT,—THE PEOPLE'S COURT

While the compiler of this work was a practicing lawyer at Lorain, Ohio, in the eighties he was told by Conrad Reid, one of the reliable, staunch citizens of the place, that a few years before he was elected to the office of Justice of the Peace of Black River Township, in which the City of Lorain is situated. After being thus honored, he had conscientious scruples as to his ability to act in the capacity of a Judge—as he knew no law, and did not want to know any; that he had many times been in Justice Courts, during the trial of cases, when the lawyers would argue pro and con as to the competency of certain evidence, etc., and he reasoned he would not know how to decide whether to admit or reject the testimony; so, all things considered, made up his mind that he would not qualify for the office. In this dilemma, he consulted Judge Ranney, who was his legal adviser when in deep water. The Judge's advice was substantially as follows:

"Squire, you have been elected by the people of your community because they have confidence in you as a man—and you are probably the best qualified of any one they could have selected. You don't have to know any law. This is the people's court—where minor matters are settled, or attempted to be settled. You go home and qualify. When a case comes up before you, hear all the testimony you want to hear: if you don't want to hear it, shut off the witnesses and the lawyers, and if they do not mind, commit them to jail. You are boss. Hear the case through, and then decide it; if you have any doubt, at the time, take it under advisement, for two or three days, as the statutes give you the right to do that, and then decide it, by the rules of common sense, and, nine times out of ten, you will be right. Tell them then, if they



are not satisfied, to take it up to the higher court, where they can get all the law they want." It is needless to say the Squire went back home, qualified, and made an ideal Justice of the Peace, and held the office for years.

### EXTREMELY MODEST—A PERSONAL EXPERIENCE

The compiler had another experience with Judge Ranney, as when mayor of the then village of Lorain he went to Cleveland to hold a consultation with the ex-Judge of the Supreme Court of the State of Ohio, in reference to this question, whether a man, not a citizen of the State, could hold the position of deputy marshal of the village, and whether, if he could, he had been legally appointed. The facts were as follows:

The village had many saloons, and as a consequence many drunkards. The council, which stood three for the saloon element, and three against them, were a tie on appointing the deputy marshal, who was a Canadian, and the mayor cast the vote—making four for him—as against three against him—the four being for temperance, or law and order. The lawless element enjoined the deputy marshal's pay. In this dilemma Judge Ranney was consulted. The first request he made was: "Won't you read the statutes upon which you rely?" The statutes were read to him, one in which the council of a village should consist of six male citizens, a majority of which should pass any ordinance they deemed best, and the mayor should have no vote, except in the case of a tie. The other statute had reference to the appointment of one or more deputy marshals, removable for cause, and was substantially in these words: "The council may appoint one or more deputy marshals, removable for cause." This had been done, as above stated. The Judge, after deliberating a minute or two, remarked—"I think you have a duly appointed officer and whether a citizen or not, he has the qualifications for that office; but it has been years since I have had anything to do with municipal law. You better consult the City Counsellor, or his deputy. They are upon the law, being fresh in their books, and could probably tell you better than I can."

He was offered a fee, which he declined, saying he had rendered no real service. It might be added the deputy City Counsellor was consulted, who had no doubt whatever as to the law, and that the deputy marshal was legally appointed, could act, and that an injunction stopping the payment of his salary should be dissolved at once. The mayor of the village was then in more doubt than he was before he left Lorain. This experience verifies the statement that age is cautious and wise: youth and inexperience is positive and bold.—*The Author.*

### JUDGE RANNEY'S STANDING IN OHIO

Mr. Ranney, who for fifty years—1840 to 1890—was among the great lawyers, if not the greatest, who adorned the profession and the Bench of Ohio, was born October 30, 1813, in Hampton County, Massachusetts, moved with his farmer parents to Portage Co., Ohio, when but eleven, had poor opportunities for an early education, but managed to attend Western Reserve College, at Hudson, for a year. Left in the spring of 1834, and commenced the study of law with Joshua R. Giddings and Benjamin F. Wade, in Ashtabula County; was admitted and began practice in Warren, Trumbull Co., and a year later, Giddings, being elected to Congress, formed a partnership with Benj. F. Wade, which continued for ten years, and was one of the strongest law firms in the State. In 1850 Mr. Ranney was elected a member of the State Constitutional Convention, and in 1851 a member of the State Supreme Court, resigning after five years of service, and moving to Cleveland.



Was appointed by President Buchanan, U. S. District Attorney for Northern Ohio, serving but a few months, when he resigned. Was an unsuccessful candidate for gubernatorial honors in 1859 against William Denison, who was elected. In 1862 he was again elected to the Supreme Bench of the State, which he reluctantly accepted, resigning after two years. From that time on his time was given to the practice until the close of his life. His decisions are found, during his first term, in the 20th Ohio, and the first 5 Ohio State reports; and during the last term in the 14 and 15 Ohio State reports.

He was a great common-law lawyer and equity judge; in the latter connection he once wrote: "When the jurisdiction of a court of equity is established, and its duty to hear and determine is unquestioned, it looks only to the substance of transactions, and is never embarrassed by the forms or complications on which they may be involved."

Says Judge E. J. Blandin, of the Cleveland Bar:

"He was distinctively a lawyer, and his life work and his renown are peculiarly linked with the profession of which he was a master. But he was a great man; and his labors and achievements in the profession furnished abundant evidence that, had he been tasked with the labors of administration, statesmanship or authorship, he was equipped with the elements that would have won for him, in these capacities, a success no less brilliant than that which was his in the profession."

#### RANKED WITH GREAT LAWYERS

"Rufus P. Ranney became the best lawyer and soundest judge of Ohio, taking rank with the most carefully trained legal minds of the country."

—*1st Rhodes' History of the U. S.*, 229.

#### COMMON CARRIER—LIABLE TO PUBLIC

"There is nothing in which the public have a deeper interest than the careful and prudent management of public conveyances, and no higher moral obligation than rests upon those intrusted with the control of dangerous forces to discharge their duties with care and skill. Upon it the safety of thousands of lives and millions of property daily depends. Now, one of the strongest motives for the faithful performance of these duties is found in the pecuniary responsibility which the carrier incurs for the failure. It induces him to furnish safe and suitable equipments, and to employ careful and competent agents. A contract, therefore, with one to relieve him from any part of this responsibility, reaches beyond the person with whom he contracts and affects all who place their persons or property in his custody. It is immoral, because it diminishes the motives for the performance of a high moral duty; and it is against public policy, because it takes from the public a part of the security they would otherwise have."—*Graham V. Davis*, 4 *Ohio State*, 362.



ROBERT RANTOUL, Jr. (1805-1852), Massachusetts

### UNCERTAINTY OF COMMON LAW

"No man can tell what the comon law is: therefore it is not law; for a law is a rule of action; but a rule which is unknown can govern no man's conduct. Notwithstanding this, it has been called the perfection of human reason. The common law is the perfection of human reasoning just as alcohol is the perfection of sugar. The subtle spirit of the common law is reason double distilled, till what was wholesome and nutritive becomes rank poison. Reason is sweet and pleasant to the unsophisticated intellect; but this sublimated perversion of reason bewilders, and perplexes, and plunges its victim into mazes of error. \* \* \* The judge labors to reconcile conflicting analogies, and to derive from them a rule to decide future cases. No one knows what the law is *before* he lays it down; for it does not exist even in the breast of the judge. All the cases carried up to the tribunal of the last resort are capable of being argued, or they would not be carried there. Those which are not carried up are not law, for the Supreme Court might decide them differently. Those which are carried up, argued and decided, might have been decided the other way, as will appear from the arguments. It is, therefore, often optional with the judge to incline the balance as he pleases. In forty per cent of the cases carried up to a higher court, for a considerable number of years, terminating not long ago, the judgment was reversed. Almost any case, where there is any difference of opinion, may be decided either way, and plausible analogies found in the great storehouse of precedent to justify the decision. The law, then, is the final decision of the judge, after counsel for both parties have done their utmost to sway it to the one side or the other.

"No man knows what the law is *after* the judge has decided it. Because, as the judge is careful not to decide any point which is not brought before him, he restricts his decision within the narrowest possible limits; and though the very next case that may arise may seem, to a superficial observer, and even upon a close inspection by an ordinary mind, to be precisely similar to the last, yet the ingenuity of a thorough-bred lawyer may detect some unsuspected shade of difference, upon which an opposite decision may be founded. Great part of the skill of a judge consists in avoiding the direct consequences of a rule, by ingenious expedients and distinctions, whenever the rule would operate absurdly; and as an ancient maxim may be evaded, but not be annulled, the whole system has been gradually rendered a labyrinth of apparent contradictions, reconciled by legal adroitness."—*Robert Rantoul, Jr.*

He defended Sims, the first slave recovered under the Fugitive Slave Law of 1850, in Mass. He was for a short period the successor of Daniel Webster, in the U. S. Senate, in 1851; and in Nov. of that year was elected to the House of Representatives.

### NEW HAMPSHIRE'S STATESMEN

"In the ratio of her population New Hampshire contributed more mental and more moral strength to the bar, to the Senate, and to the cabinet of the country than any other State in the Union. There were Ichabod Bartlett, the Randolph of the North, the brilliant flashes of whose wit, keen sarcasm and pungent irony gave life and spirit to the dry judicial discussion; Sullivan, the fascination of whose happy eloquence



still lingers; Fletcher, whose legal acumen, clear, distinct, and precise statement, closely reasoned argument and conscious mastery of his subject, adorn no less the bench than formerly the bar; Jeremiah Mason, that counsellor of marvelous sagacity unrivalled in his knowledge of human nature, and Daniel Webster."

—*Robert Rantoul, Jr., Eulogy of Levi Woodbury, Oct. 16, 1851.*

### THE INFLUENCE OF CHRISTIANITY

"The genius of Italian literature was cradled on the stormy sea of liberty. The fine arts, through the whole period of their perfection, were the exponents of Christianity. Where are the Dante, the Ariosto, or the Milton, of the moslem faith? Where is the Michael Angelo, or the Raphael of Bagdad, or of Teheran? Where the Handel of Cairo, or Aleppo? Poetry is dumb, and music soulless, and painting hath no charm under the brutalizing superstition, into which the doctrine of the Koran, after the first outburst of frantic ferocity has finally subsided. Strike with such paralysis the mind of Europe, and the stary Galileo would have lived to other woes than those of too much science. No Vasco would have explored the adventurous passage of the realms of fabulous wealth in India or Cathay. No Columbus would have given a new world to Castile and Leon, a refuge for the oppressed, room for the disenthralled man to grow to the full stature of intellectual and moral greatness. No Guttenburg would have given to truth the thunder tones with which she shakes the world. The genius of mechanical invention would not have fettered the most potent of the demons, steaming, chaining him to the wheel, to toil at the taskwork of many millions, under the supervision of the few trusty sentinels. Commerce would not have spread her white wings, like the angel of peace, over every ocean, enriching, enlightening, blessing wherever she smiles, and brightening daily every link in the golden chain of universal brotherhood. Abdaraman had planted himself like a hungry lion in the path of human progress. Karl Martel lifted his stalwart arm, and smote the grim Paynian with his heavy Francisque. The way is open; humanity passes on."

—*Robt. Rantoul, Jr.—In Celebration of 75th Anniversary of Apr. 19, 1775, at Concord, Mass., Apr. 19, 1850.*

### THE SOURCE OF EUROPEAN LIGHT

"The Southwestern peninsula of Asia, inclosed by the Red Sea, the Mediterannean, the Euxine, and the Caspian, with a slight auxiliary influence from Egypt, is the source whence flowed into Europe all the notions,—social, political, religious, which she has received from abroad for more than 3,000 years."

—*Robt. Rantoul, Jr.—Anniversary of Apr. 19, 1775, at Concord, Apr. 19, 1850.*

### AGAINST ADMINISTERING OATHS

"Belief is involuntary. It is, therefore, no merit; nor is disbelief a demerit. To one mind certain evidence is conclusive; to another it carries no conviction. Let any man try to believe that a triangle is a circle, and if he were to gain the wealth of worlds he cannot. \* \* \* There is no common law definition of a deity, and yet the law says that a man must believe in a God. What sort of a God? The Hottentot is called. Do you believe in God? Yes, and in what sort of a god does the Hottentot believe? Why, in a block of wood, carved by his own hands. He wants rain, and he whips his God—thinking by this castigation to procure the desired shower. Thus his god is not a being who controls him, but one whom he controls. And yet the Hottentot is a good witness in the courts of Great Britain. Where is the line to be drawn that shall indicate the



kind of deity in which a witness must believe? \* \* \* How also are you to get at the fact of unbelief? There is no way. There are but two classes of infidels—the honest one, and the dishonest one. The honest will tell the truth, and state that he disbelieves in a God. He cannot be sworn. The dishonest will lie about it, and he is sworn.”

—*On a Witness Bill, in Mass. Legislature, Feb. 23, 1837.*

### THE THINKER

“He who cannot think is an idiot; he who will not, is a bigot; he who dares not, is a slave; and he who thinking right, acts wrong, is without excuse or palliation, a villain.”

—*Address in 1839 on the ‘Education of a Free People’.*

### THE SAXONS

“The Saxon family, carrying with them the love of freedom which is a part of their nature, the language of freedom which is their inalienable birthright, and those free institutions which, through centuries of bloody strife, their fathers have secured and perfected, have planted their colonies wherever agriculture could find a soil to cultivate, or commerce products to barter.”—*Robert Rantoul, Jr.—Idem.*

### READY DEBATER

“In effective talent, for debate, Mr. Rantoul was unequalled. It is not too much to say, that no son of Massachusetts of his age ever entered the legislative halls better fitted for various and appropriate knowledge, by high purity of character, united with a ready and apt command of all the mental resources, in rapid, lucid, logical flow of effective and brilliant eloquence, than Robert Rantoul, Jr.” (This was in 1845, when he was 40 years of age); ‘Memoirs,’ 310.

### MONEY

“Money facilitates exchanges as oil facilitates machinery, and more than is necessary for that effect is useless and injurious when introduced, and flows off as soon as it can make its escape as naturally as too much oil from an engine. Just so much money is wanted for the business of any country as that business will keep at a par value with money in other parts. If there is less than we want, its value falls, and it flows out as it is now flowing out in 1836. The amount in existence is of no consequence, if it does not vary suddenly, and if we have our share. If there were fifteen-sixteenths of the currency of the world struck out of existence to-day, an ounce of silver to-morrow would perform the same office that an ounce of gold performed yesterday; the only inconvenience would be in adjusting the new prices; but after they were adjusted business would go on and the rate of interest would be precisely the same as before.”—*From speech on Banking Bill,—Mass. Legislature, Mch. 22, 1836; ‘Memoirs,’ 359.*

### GENIUS

“Genius is nothing but strong passions working their action through the instrumentality of strong intellect.”—*From 4th July oration at South Reading, Mass., 1832,—‘Memoirs,’ 168.*



## WEALTH AND POVERTY IN UNION

"The aristocracy of wealth is impossible in a country where the property of an intestate father is divided equally among his children. The aristocracy of poverty is quite as impossible, and equally undesirable."

—*From address to Workingmen of the U. S., 1833,—"Memoirs," 247.*

## WASHINGTON

"That Washington was what is called a self-made man is well known to us all, yet Washington was pronounced by Patrick Henry, on his return from Congress in 1774, to be the greatest man in information and in judgment in that body."

—*From 4th July oration at Scituate, Mass., 1836. "Memoirs," 265.*

## WHAT MAKES A NATION GREAT

"A Nation is made great, not by its fruitful acres, but by the men who cultivate them; not by its great forests, but by the men who use them; not by its mines, but by the men who work in them; not by its railways, but by the men who build and run them. America was a great land when Columbus discovered it; Americans have made it a great Nation. In 1776 our fathers had a vision of a new Nation 'conceived in liberty and dedicated to the proposition that all men are created equal.' Without an army they fought the greatest of existing world empires that they might realize this vision. A third of a century later, without a navy, they fought the greatest navy in the world that they might win for their Nation the freedom of the seas. Half a century later they fought through an unparalleled Civil War that they might establish for all time on this continent the inalienable right of life, liberty and the pursuit of happiness. A third of a century later they fought to emancipate an oppressed neighbor, and, victory won, gave back Cuba to the Cubans; sent an army of school-masters to educate for liberty the Filippinos, asked no war indemnity from their vanquished enemy, but paid him liberally for his property. Meanwhile they offered land freely to any farmer who would live upon and cultivate it; opened to foreign immigrants on equal terms, the door of industrial opportunity, shared with them political equality, and provided by universal taxation for universal education.

"The cynic who can see in this history only a theme for his egotistical satire is no true American, whatever his parentage, whatever his birthplace. He who looks with pride upon this history which his fathers have written by their heroic deeds, who accepts with gratitude the inheritance which they have bequeathed to him, and who highly resolves to preserve this inheritance unimpaired and to pass it on to his descendants enlarged and enriched, is a true American, be his birthplace or his parentage what it may."—*Said by Lyman Abbott, Mar. 7, 1916.*



ISIDOR RAYNER (1850       ), Maryland

## DEFENSE OF ADMIRAL WINFIELD SCOTT SCHLEY

"It has taken three years to reveal the truth. There is not a single word that has fallen from the tongue of a single witness, friend or foe, that casts the shadow of a reflection upon the honored name of the hero of Santiago. He has never claimed the glory of the day. Let it be known, he has never claimed the glory of that day. No word to this effect has ever gone forth from him to the American people. The valiant Cook, the heroic Clark, the lamented Philip, the intrepid and undaunted Wainwright, and all the other captains and every man at every gun, and every soul on board of every ship, are equal participants with Admiral Schley in the honor wrought upon that immortal day. We cannot strike his figure down standing upon the bridge of the *Brooklyn*. Says Boatswain Hill, 'Every head was bowed but his as the Spanish shot and shell fell thick and fast,' and sent the life blood streaming from young Ellis, this gallant martyr for his country's cause. We cannot strike him down. 'You may assassinate me, but you cannot intimidate me,' said the Irish Patriot Curran as he turned upon his accusers and traducers. There he stands upon the bridge of the *Brooklyn*, his ship, almost alone, receiving the entire fire of the Spanish foe, until the *Oregon*, as if upon the wings of lightning, sped into the thickness of this mortal carnage. 'God bless the *Oregon*!' was the cheer that rang from deck to deck; and on they went, twin brothers in the chase, until the lee gun was fired from the *Christobal Colon* and the despotic colors of Spain were swept from the face of her ancient possession. 'Well done: congratulate you on the victory,' was the streamer that was sent from the halyards of the *Brooklyn*, and from that day to this no man has ever heard from Admiral Schley the slightest whisper or intimation that he has usurped the glory of that imperishable hour. The thunders of the *Brooklyn*, as she trembled on the waves, have been discordant music to the ears of envious foes, but they have pierced with a ringing melody the ears of his countrymen and struck a responsive chord at the fireside of every American home. And what is more than all which has been revealed in this case, as matchless as his courage, and as unsullied as his honor, is his beautiful character and the generous spirit that animates his soul, and the forgiving heart that beats within his bosom."

—*Before the Court of Inquiry in behalf of Admiral Winfield Scott Schley.*

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## CHRISTIANITY

"Christianity is more than the institutions of Christianity: An institution is but a corpse if it does not embody a living spirit; form without spirit is always lifeless; language is but idle words if it is not a vehicle for thought or feeling; the kiss may be a symbol of treason as well as of loyalty; the palace without love is a hovel, the hut which enshrines love is a home. But it is also true that spirit without body is almost as useless. Love in the heart inspires no one if it is not expressed; unexpressed thoughts are of little service to him who possesses them and of no service to others. The Declaration of Independence would have been of no value if there had not been men willing to fight for it and die for it. Christianity is the spirit of Christ; the Christian Church is its imperfect embodiment. The institutions of religion are not religion; but religion would be almost wholly ineffective if it were not for its institutions."—*Lyman Abbott, 'What Christianity Means to Me'.*



## ISAAC F. REDFIELD (1804-1876), Vermont

### BENEFITS AND DISADVANTAGES OF THE RAILROAD

“Legislation in the infancy of all new undertakings is more imperfect than it will be likely to be when such projects are more fully matured. \* \* \* Hence it is not always easy to impose upon these companies the obligation to do in all cases what simple justice requires, and those who suffer essential, and sometimes perhaps, ruinous injuries, or rather damage, by their construction and operation, must be content to take the law as it is. They must remember that courts do not ordinarily make the law upon this subject, more than others, but only take it as they find it, ready-made to their hands, and apply it in such manner and to such cases as it was intended to reach.

“It is no fair test to the general liability of a railroad company for their acts to argue from what natural persons may lawfully do, and what, if done by them, becomes a nuisance. \* \* \* In the absence of all statutory provisions to that effect, no case, and certainly no principle seems to justify the subjecting a person, natural or artificial, in the prudent pursuit of his own lawful business, to the payment of consequential damage to other persons, in their property or business. This always happens, more or less, in all rival pursuits and often where there is nothing of that kind. One mill, or store, or school, often injures another. One’s dwelling is undermined, or its lights darkened, or its prospect obscured and thus materially lessened in value, by the erection of other buildings upon the lands of other proprietors. One is beset with noise, or dust or other inconvenience by the alteration of a street, or more especially by the introduction of a railway, but there is no redress in any of these cases.

“The thing is lawful in the railroad, as much as in the other cases supposed. One would not care if they were altogether excluded from cities and large villages. But the legislature have determined otherwise and the plaintiff must be content to take his chance with other citizens. These public works come too near some and too remote from others. They benefit many and injure some. It is not possible to equalize the advantages and disadvantages. It is so with everything and always will be. We do not expect to have the consolation, if consolation it be, to know that these little inequalities will ever be made precisely equal with us all, in this life. But it will be so at no very distant day, and it becomes a reasonable man, perhaps, not to magnify them inordinately since they are so short-lived and so absolutely past the remedy of all human skill. Those most skilled in these matters, even empyrics of the most sanguine pretensions, soon find their philosophy at fault, in all attempts at equalizing the ills of life. The advantages and disadvantages of a single railway could not be satisfactorily balanced by all the courts of the state in forty years. Hence they must be left, as all other consequential damage and gain is left, to balance and counterbalance itself as it best can.”

—*Isaac F. Redfield, In Hatch v. Vt. Central R. R., 25 Vt., 49, 58.*

(Judge Redfield was a Supreme Judge of Vt. for 25 years,— from 1835 to 1860: a graduate of Dartmouth College, N. H., 1825; professor of Medical Jurisprudence in Dartmouth College, 1857-61; made Doctor of Laws, by Trinity College, in 1849, and Dartmouth, in 1855; was author of many law books, after leaving the bench, in 1860, and removing to Boston, 1861.)

“He brought to his high office, as judge, profound learning, keen observation, comprehensive wisdom, and a clear and incisive perception of all matters submitted to his judgment,” says William B. C. Stickney, of the Vermont Bar, *5 Great American Lawyers*, p. 12.



JAMES A. REED (1861- ), Missouri

#### CHAMP CLARK MEMORIAL—JAMES A. REED

“He who sleeps today bears with him to the tomb a legacy so rare, even envy is compelled to pay the tribute of admiration. His long life (died at 71) was devoted to the service of the public will. Upon his country’s altar he placed the whole wealth of his magnificent talents, the zeal of youth, the energy of middle life, the wisdom of old age. The fires of patriotic love for home and country consumed his very soul. He will live because he helped liberty to live. Men who so live never die. In ever-widening circles his influence will be felt. As time runs on and the historian surveys the picture of this troubled time, there will arise in it no figure more heroic than the rugged form that lies so still today. He was the best beloved of Americans.”

—*Jas. A. Reed, U. S. Senator, Mar. 5, 1921, in H. of R., Washington, D. C.*

#### SOCIALISM

“Shall the federal government license business? Before urging or condemning government control it is necessary to get a proper conception of the part the government plays. The greatest trouble with the public is that it has been so prosperous, so secure in its optimism that people have given little real thought to the fundamentals of government. It is the most natural thing in the world for people to say, ‘it ought to be stopped by law.’ Everyone desires to air his troubles at the City Hall, Jefferson City or Washington. At Washington, congress has so many appeals it dumps the whole mess over on the President after enacting laws giving him authority to name commissioners or boards. These boards of three, five or nine men, however well equipped, well intentioned, go out with almost unlimited powers for investigations. Often an ‘expert’ who couldn’t make a living in his home town, does all the probing. The board reviews and reports his findings.

“The public believes it gets government control. In most cases, what it really gets is the individual impression of one man, or a small group of men, often not so well acquainted as a clerk in your employ. Not questioning the necessity of government action, the results, we all know, led to chaos. Rules were devised and our investigation revealed that most of the hardships were due to the enforcement of those rules. But the instance which shows the fallacy of theorist control was in the summary. We started a probe to determine a coal trust, a combination of extortionists. Instead of finding that, we found the coal supply was adequate for 6,000 years; that distribution was hindered by strikes and lack of transportation; that both these delays were the direct result of rules and orders by theorists. Wage increases doubled the mine price of the product. Without saying whether government wage scale was needed, it caused dissatisfaction in coal sections where conditions differed from those of other sections. Virtually doubling of railroad rates and an arbitrary control of profits gave the public coal at a guaranteed price!—at a price almost double it had paid before.

“But the government control, while limiting profits, failed to guarantee losses and individual effort stopped. Here is Mr. Walter S. Dickey. He makes clay pipe. If any government bureau insists on regulating his sales and profits, that industry must stop until that same board specifies the wages he must pay, the price of his materials, his cost of coal for manufacture, his shipping rates and be ready to safeguard his investment. Otherwise the initiative of the creator of a business is lost.



"This nation, the greatest in history, didn't become so through the superiority of its founders. It was through the unshackled efforts of the limbs and brains of its people that it grew. A government that attempts to stifle that initiative invites disaster."

—*To the Commercial Club, Kansas City, Mo., March 30, 1921.*

### FOREIGN IMMIGRATION INTO U. S.

(The Senate had under consideration H. R. 14461, to provide for the temporary suspension of immigration, and for other purposes).

"In my judgment, the Congress is in this matter repeating its often-repeated blunder. \* \* \* Let me take just a moment to say that there has been no stage of American history when the same cry was not heard.

"It was made against the Dutch when they came here and began to populate large portions of Pennsylvania; and even so wise a man as Benjamin Franklin, probably the wisest man this country has ever produced, declared, in substance, that the U. S. would be turned into a foreign province by the invading Dutch, and yet probably no better people ever lived anywhere than the Dutch immigrants and their descendants. It was again declared when the Irish, in order to escape the intolerable conditions of their own country, fled to this land. They were denounced as ignorant paupers. Many, indeed, were unlettered, for education had been denied them. Their schools had been destroyed and their teachers had been persecuted, so that the schools of Ireland were held in the depths of the forest, and thus came to be known as 'hedge schools.' It was also true that the Irish immigrant was in many instances a pauper in appearance; frequently he had scarce clothing for his back. He cut but a sorry figure at first. He had to accept the most lowly occupations, and he did. Whereupon the hue and cry was raised against the Irish immigrant; against the Irish. Yet, sir, in America the sons and daughters of Ireland have written their names on every brilliant page of American history. The offspring of those who would have barred the Irish from our shores have found it very hard to keep pace with the descendants of the despised Irish immigrant.

"Again the cry was raised when the tide of Bohemian immigration set in. There had been persecution and rebellion in Austria. Accordingly, the Slovaks for a time had come in great numbers. They arrived wearing their leather waistcoats and smoking their long pipes, their countenances grizzled with the agony of toil and ploughed deep with the furrows of hardship. At once self-appointed custodians of America cried out against these immigrants and prophesied the destruction of our country. The immigrants survived. They adopted American customs. They melted almost insensibly into our civic and political life. The descendants of these Bohemians today take their place in the ranks of our citizens and keep pace with the best there is.

"Similarly, a cry was raised against the Swedish, the Norwegian, and the Danish immigrants; yet there sit in this Chamber today two men, one a Norwegian and one a Dane by birth. They came as immigrants. One of these distinguished public servants told me when he landed here he possessed but a single dollar. He probably could not have qualified for entrance under the present immigration laws.

"Attacks have likewise been made upon the Jewish people who have crowded to our shores. The spirit of intolerance has been especially active as to them. At this hour a man possessed of a mighty fortune, yet so illiterate and ignorant that he does not know the history of our country, is instigating a propaganda against the people; but the Jew who came here, the victim of persecution and poverty, has nevertheless made his way in every avocation of life. At the bar and on the bench, in medicine, in art, in industry, in finance and science he has taken a



high and honorable place. Those who would proscribe him are merely the advocates of medieval intolerance. German immigrants came to this country in great numbers, and the same old cry was raised. Yet even at this hour, when the fogs of prejudice still hang thick in the skies of national opinion, I do not hesitate to say that the German immigrants to this country have added a sturdy strain to the American blood.

"I have before my mind's eye a scene of not long ago. They were marching away, some of them volunteers, some of them drafted. But they were marching away all in the same brown uniform,—the son of Ireland, with his blue eyes; the son of Scandinavia, with the flush of health in his cheeks; the son of Italy, whose warm clime had burned his face to a swarthy hue; the son of Scotland, with his clean limbs and his straight back; the son of Austria, with his big bones and double fists; the son of Germany, with his firm muscles and set jaws. Yet as they marched away they were all Americans. Upon the battle field they bowed their backs and held their bayonets fixed and firm, they charged with indomitable hearts, they fought and died in the same heroic way for their flag and our flag, for their country and our country.

"Who are these royal families of ours? They are the children of the oppressed lands of the earth. Their fathers came here barefooted or wearing wooden shoes, with homespun on their backs, with the weight of twenty centuries of oppression upon their souls. They came in ignorance and superstition. They burned old women as witches in Massachusetts.

"They drove Roger Williams into the wilderness. They set up the whipping-post. They established the laws of Great Britain, with all their brutalities as well as their virtues.

"If I had my way, I would establish in Europe courts or tribunals where the character of each immigrant could be examined, whereby we could become assured that he was sound in body, sound in mind, and sound in principles, and then I would let him come. And every such man who came would be another man added to our man power; every soul that came would be a soul added to the aggregate soul of America; every heart that came would beat for our flag, and every hand would strike in its defense. This is a bill of proscription. It is as narrow as the Middle Ages. It is as obsolete as the spirit of the sixteenth century. It belongs to the time of the rack and thumbscrew, when the argument was the scaffold and when philosophy found expression in the torch of persecution. I decline to support such a bill."—*In U. S. Senate, Feb. 19, 1921.*

#### THE MEANING OF MOTHERHOOD, BY JAMES A. REED

"What I have said and shall say I mean to apply to the members of the Children's Bureau, including its servants, agents and employees, substantially all of whom enjoy the blissful and seemingly perpetual state of single blessedness. I care not how estimable the office-holding spinster may be, nor how her heart may throb for the dream children she does not possess, her yearnings cannot be substituted for a mother's experience. Official meddling cannot take the place of mother love. Mother love! The golden cord that stretches from the throne of God, uniting all animate creation to divinity. Its savage women held their babes to almost famished breasts and died that they might live. Its holy flame glows as bright in hovels where poverty breaks a meager crust as in palaces where wealth holds Lucullan feasts. It is the one great universal passion, the sinless passion of sacrifice. Incomparable in its sublimity, interference is sacrilege, regulation is mockery.

"The wild beasts hear its voice and answer to its call. A tigress finding her cubs slaughtered, pauses to lick their wounds, and then with raging heart seeks out their murderer. A she wolf standing at the mouth of her den, with gleaming fangs and blood-red tongue, dies in defense of her whelps. Tiger's cubs, or wolf's whelps, I would rather feel the rough caresses of the hairy paws of my savage mother, I would rather have her



care and protection than that of an official animal tamer. I once saw a little timorous mother quail, with marvelous intelligence and still more marvelous courage, protect her brood by exposing herself to the hunter's deadly aim. I then realized that nothing could take the place of mother love.

"If this divine fire so warms and thrills the heart of beast and bird, with what intensity does it consume the bosom, with what ecstasy inspire the soul of a woman, for the child of her body? Although she knows she must risk her own to bring forth a new life, she does not draw back. The love-lit eyes behold only visions of happiness, of glory and of power to be realized by her unborn child. With smiling lips and eager heart she enters the vale of shadows. The first cry of the new born falls on her ear, sweet as the music of paradise. Her trembling hands caress the tender skin; her soul cries out the anxious question, 'Will my baby live?' The torturing days of convalescence fly swiftly upon wings of hope. She nestles the tiny, helpless thing to her bosom; sustains it with the milk of her body, every drop drawn from a fountain of infinite love. With indescribable solicitude she watches her offspring. Even when her body slumbers her soul keeps vigil and her hands in unison with her spirit will stretch forth to soothe the baby to sleep. With glowing pride she watches the growing child, shields it from harm, guides it along the paths of rectitude, inspires its soul with lofty sentiments of honor and of faith in the eternal God.

"When time has piled the snows upon her head and turned her brown or raven locks to white, her love will still abide, riper and sweeter with the passing years. Though she may live until her children are themselves grown old and gray, she yet will see the silken locks of youth; their roughened hands yet have the caressing touch of baby fingers; their voices bear to her the tender and melodious notes of industry. And when at last she approaches the portals of death there is no solace so sweet as the presence of those she bore 'to people and replenish the earth.' For mother love there is no substitute, even though it bear an official stamp. If there be truth in religion, then this holy sentiment was planted in woman's heart by the hand of God. It has made life possible. It is in truth the very source of life itself. When all other passions are dead it survives. It will endure the scorching breath of contumely with unwavering fidelity.

"A mother will enter prisons of shame and kiss a felon hand thrust through the bars. She will sit beside the accused in courts of law, when the mob jeers and the heartless machinery of justice grinds its grist of agony, and with unwavering faith maintain her child is innocent. She will stand at the foot of the scaffold and, when the trap has fallen, cover the condemned body with kisses and flowers. It is still to her the innocent suckling she once hugged to her breast. But if the path of life has led her son to fields of honor, her heart will glow with pride, ineffable, unspeakable. If he is called to war, she will bid him good-by with dry eyes, altho her heart be filled with tears. She will maintain a firm and hopeful mien, that he may gain sublimer courage from her sublime example. When he sleeps upon the tented field her spirit will keep watch. Whilst he is slumbering she will pray. In the agony of waiting she will die a thousand deaths, but will choke back her sobs and hide her torture. She will search for him among the slain, and try with kisses to warm the dead and unresponsive lips to life. She will coffin her heart with the beloved body, and her soul will keep the eternal vigil of a deathless love.

"Mother love! It has produced, fondled, reared, inspired and glorified all of the shadowy hosts who have passed across the 'bank of time' since man first raised his eyes toward the heavens. It is, I say again, the golden cord that binds the earth to God. Official interference between the mother and her babe is tyrannical and criminal."

—*Senator James A. Reed, in U. S. Senate, June 29, 1921, on 'The Maternity and Infancy Bill.'*



## JAS. A. REED SCORES GIFT TREATY

"I have heard more things Abraham Lincoln said distorted to fit the favorite theory of some gentleman of today than any other man. But the greatest act of vandalism I ever have known is for a pretended friend to reach his hand into the coffin of the helpless dead and tear from it the white shroud to run up as the white flag of surrender over the great monument Roosevelt sought to erect to his memory. This twaddle about not having wronged Columbia, yet owing her 25 million dollars, is not worthy of a debate in a country schoolhouse between a lot of boys 14 years old."—*In U. S. Senate, Apr. 19, 1921.*

(Jas. A. Reed was born Nov. 3, 1861, in Mansfield, Ohio; studied law in the office of Hubbard, Clark and Dawley, Cedar Rapids, Ia., to which place his parents moved during his boyhood; admitted to bar, 1885; married Laura M. Olmstead, at Cedar Rapids, 1885; moved to Kansas City, Mo., 1887; Prosecuting Attorney of Jackson Co., Mo., 1887-1900, in which office he tried 287 criminal indictments, and convicted 285; was then elected mayor of Kansas City, for two terms, 1900-4; afterwards has served one term as U. S. Senator, and is now serving a second term of six years. He is a Democrat of the Jacksonian school).

## AMERICA WILL FIGHT

"This is the first time in a hundred years since we have been at war with Europe; why were we forced into the present conflict? Well, I think I can answer. First, because international law is in many respects vague and indefinite. I pause at this moment to say that international law should be clarified and codified. The past construction of international law leads to the conclusion that the right of blockade is limited to particular ports; it being required that the blockade shall be rendered effective by constant patrol. This rule, however, was perhaps not perfectly clear and certain. It was doubtless because of this fact that England undertook to declare a blockade of the entire North Sea—a thing that hitherto had been generally regarded as illegal. That was followed by Germany declaring a blockade of the English Channel and the waters in and about England; and that was followed by Germany undertaking to sweep all commerce from the seas. That brought us into the war.

"But there was another reason. The world had been led to believe that America would not fight, and perhaps could not fight. We were not as well prepared as I wish we had been, but I shall not go into that. Many of us made mistakes along that line, and I do not care to argue it now; but Germany believed, more than any other people, that we could not fight. They thought that we were a lot of traders, either too proud or too lazy or too cowardly to fight, and so they threw the glove square in our face. They said, 'You cannot help yourselves, even if you would.' Ah! sirs, that mistake will never be made again. While woods grow and waters run the world will now know that Americans can and will fight. Never again, so long as we maintain our pride of race, will that mistake be made. They said we could not get ready to fight; but when the boys from the farm and the anvil and the office were called on they came, a glorious concourse of indomitable souls. They went across the ocean, sometimes imperfectly armed, but that made no difference; they may not have had all the weapons they needed, but that did not daunt their courage. The cry upon their lips was: 'Take us to the trenches.' The only desertions from the American ranks were desertions of men who left their camps that they might serve upon the battle's blazing line.

"How well did they fight? I said the other day, and I repeat, the French had been driven back; gallantly they had retreated. The English lion, with the bloody froth dropping from his white fangs, facing the foe,



but yet being driven back; the French, with gallant heroism, carpeting the ground with their immortal dead; but still they were being driven back; until at last, in the agony of his soul, Haig cried out: 'Our backs are to the wall, Britons, stand or die.' Just then new sounds were heard coming from the rear. It was the mingled rebel yell and the Yankee cheer. They swept down through Chateau Thierry, through St. Mihiel, through Belleau Wood, on through the forests across the Rhine, until they made themselves the masters of Berlin. The flag of the Republic floats today above the fortresses of the Teuton.

"Sirs, that is our history. Can it be made better? Can you do better than that? Ah, my colleagues, why abandon the nationalism that has done so much for our country for the desperate experiment of internationalism? The past rises before me like a dream. Again, I see the lantern in the old North Church; I hear the clatter of galloping feet as Paul Revere rides out into the night; I see the farmers gathering along the lanes of Lexington, and I hear the sharp reports of their muskets; I catch a glimpse of the next day when the minutemen made their heroic stand along the little stream spanned by the bridge immortalized by Emerson's thrilling lines:

" 'By the rude bridge that arched the flood,  
Their flag to April's breeze unfurled,  
Here once the embattl'd farmers stood,  
And fired the shot heard round the world.'

"I see them at Valley Forge as they walk amidst the snows and frosts, staggering and hungry, falling dead, but not surrendering. I behold Washington with his troops crossing the Delaware to attack the Hessian horde. I see the flag of Cornwallis above the battlements of Yorktown lowered and the Starry Banner go up amidst the tears and cheers of Washington and his soldiers. Since then no despot has dared try to drag it down. Shall it be now supinely surrendered into the hands of foreigners? Shall it be turned back to the monarchs we defied? Shall we yield the sovereignty thus gloriously obtained?"

—James A. Reed, *'Analysis of the League of Nations,' U. S. Senate Feb. 22, 1919.*

## WASHINGTON AND THE REVOLUTION

"We look back to the glorious fields of the Revolution. We look back to the hours when American women stood in their cabin doors and beat back the native savage and kept the homes while the fathers stood with Washington upon the battle front. We look back to those birth hours of liberty, when from the womb of holy patriotism there sprang the infant giant America. We look back to forests that were conquered, leveled, to streams that were bridged, to a continent conquered, to vast cities raised by the magic of genius, to churches and schoolhouses that crown the hills of a vast land. We look to homes where men and women have lived in equality and in liberty. We look to all the world and see the oppressed of every land turning their eyes to us, gaining inspiration from our example and strength to break their masters' chains. This is the past to which we look, and standing towering above the picture is the majestic form of George Washington, father of this Republic, the greatest of the dead, incomparably the superior of any of the living."

—Jas. A. Reed, *'The League of Nations,' Debate with Senator Hitchcock, U. S. Senate, Mch. 2, 1920.*



## THOS. B. REED (1839-1902), Maine

### MONOPOLY AND TRUSTS

“ ‘Monopoly,’ said Horace Greeley, a doctor of laws, and once a candidate of the Democratic party for the presidency, ‘monopoly is, perhaps, the most perverted and misapplied word in our much-abused mother tongue.’ How very tame this language is. I suppose that during the ten years last past I have listened in this hall to more idiotic raving, more pestiferous rant on that subject than on all the others put together. And yet I do not regret it. What a beautiful sight it is to see the revenue-reform orator go into action against monopoly. Nelson, as he stood blazing with decorations on the decks of the *Victory* on the fatal day of Trafalgar; Napoleon at Friedland, as the Guard went cheering and charging by; Thomas Sayers, as he stripped for the championship of England when Heenan had crossed the lifting waters; the eagle soaring to his eyrie; the royal man-eating Bengal tiger in his native jungle; nay, the very bull himself, the strong bull of Bashan, as he uplifts his bellow over the rocky deserts of Palestine, are all but pale reminders of one of these majestic creatures. And yet, outside the patent office, there are no monopolies in this country, and there never will be. Ah, but what is that I see on the far horizon’s edge, with tongue of lambent flame and eye of forked fire, serpent-headed and griffin-clawed? Surely it must be the great new chimera, ‘Trust.’ Quick, cries every masked member of the Ways and Means. Quick, let us lower the tariff. Let us call in the British. Let them save our devastated homes. Courage, dear brethren. Be not too much disturbed. The Lord will reign even if the board of mayor and aldermen should adjourn.”

—Thos. B. Reed, in *House of Representatives, on the Mills Bill, May 19, 1888.*

### PUBLIC SENTIMENT

“There is, and always has been, one tremendous ruler of the human race, a ruler so great that no other despotism has been possible, and that ruler is that combination of the opinions of all, that leveling up of universal sense which is called Public Sentiment. That is the ever-present regulator and police of humanity. But it behooves a man to take heed before he begins to run counter to it, whether he longs to proclaim a great principle which will free a race, or merely wants to wear his hair long down his back.”

—Thos. B. Reed, from an Address, July 30, 1885, at Colby University, Waterville, Maine.

### IMPERIALISM

“Wisdom of course did not die with forefathers even as wise and famous as were ours. The world does not roll about the sun a hundred and twenty times and about itself forty and four thousand times without evolving conditions and awakening new notions, some of which are for the good of the world. Nevertheless all new notions are not good. Indeed, we know that most of them are bad and that all of them should pass under careful scrutiny before being put into action. The spoken, and even the written, word may be harmless and fly away, being winged, but deeds cannot depart and are never effaced from the history of the race. We may reascend heights from which we have fallen, but oftener nations find that, after a mistake, there is no place for repentance, even if they seek it carefully with tears. \* \* \* Human selfishness pervades all human life. It is the mainspring of human action. Any man’s selfishness would wreck all his surroundings were it not for the antidote, which is



the selfishness of the rest. Therefore, if men are to be justly governed they must participate in government. Do I mean to say that all men are of equal power? No, they cannot be. But give every man equal rights, and intellect and wisdom will justify themselves by persuading where they have no power of command.

"The highest level of liberty in any land is the liberty of the meanest citizen. Do you want another example from the history of our new ally, with whom we are to unite to propagate liberty by force? Already plans are being matured to govern with military power the lands we are conquering until such time as the blessings of liberty can be fully vouchsafed. So England began with Ireland. Read what Charles James Fox said a hundred years ago in the famous speech of Feb. 3, 1800. Ireland began under a military despotism, and remained under the tutelage of a nation we deem worthy to be our companion in the regeneration of the world. Did this good nation govern unselfishly? Did she make out of Ireland more than Ireland could have made out of herself? After more than a century of dreadful struggle, England, proud, obstinate England, found no other way than to admit to equal rights the enslaved land, 'the aliens in blood and religion.' So in the whole history of the world there is no peace for the governors until the governed are governors also. \* \* \*

"Public opinion is the foundation and the sole foundation on which any nation can rest. But it is public opinion solidified by discussion, by full and mature reflections guided by the past as well as the present. The voice of those crying aloud in the market-places is not the voice of God, either for time or eternity. There was once a city where for the space of two solid hours all the people cried out, 'Great is Diana of the Ephesians!' For two hours public sentiment was unanimous. Yet in that very city at that time Paul was preaching the Living God. \* \* \*

"But these things, strong as they are, are but trifles beside the great risk we run of forgetting principles of our government. Our Fathers fought them once, and Lincoln's Second Inaugural tells the solemn story in words as stately and sublime as ever flowed from lips inspired by God. I do not compare our possible governing of others without their participation to the sin of human slavery; but, as I remember the story of the Indians whom we have governed at home and of the negroes we are governing at home, that time may come when I can claim the credit of great moderation speaking of the government of people utterly unknown four thousand miles away."

—*Thos. B. Reed.* *The above was found in his manuscript on Imperialism.*

## THE RULE OF THE PEOPLE

"Progress must be of a race as a whole, and not of a few individuals who are to be leaders and masters. \* \* \* All assemblages of men are different from the men themselves. Neither intelligence nor culture can prevent a mob from acting as a mob. The wise man and the knave lose their identity and merge themselves into a new being. The habits of individual life are such that we have to be in constant control of ourselves. We know our limited powers and do not purpose to attempt what we cannot do. \* \* \* Our constitution and system of government are in full recognition of the fact that our people are to govern and also of the equally important fact that they should have a chance to learn how to govern. We elect a House every two years. We elect a President for four years and a Senate for six. Why are there these differences? Why should not the people have opportunity to change all of them every two years and make a clean sweep as it seems to them good? Simply because wisdom is not born in an hour. Our forefathers believed that the discussions involved in changing during three different periods the Executive and the two chambers, would involve also an education of the whole



people which would make their judgment of the people of this country sound. Three times within my experience the judgment of the people has been changed on three great questions. That the final judgment is correct is not for me to say in this presence, but as a rule I think I should prefer the judgment of men after discussion rather than without discussion. It is a great thing to have institutions so framed that the people can educate themselves before they are called upon to act.

"\* \* \* Are we not the victims of destiny, with our lot marked out for us beyond our will and ken? Is not this a world under control of the survival of the fittest, not the fittest to enjoy the society of the Almighty, but the fittest to trample on each other? I do not believe it. Survival of the strongest may be new to science, but it is not new to religion. The strong, remorseless arm striking down the weak and possessing the earth, the unpitying tramp of the horse's hoofs devastating the land, are well known to the years that have gone, and they filled the thoughts of man; but they are no longer supremely prevalent on earth. Justice and equality and the rights of man have an ever-increasing sway, and the power of the mighty in arms is every day more and more mitigated by that justice and love which satisfies the longings of the human heart better than even riches or superiority of power. Whatever contribution any man makes to humanity and justice will not be lost, but will be gathered up and be among the treasures of the Almighty."

—*Thomas B. Reed, from an Address at the 100th Anniversary of Bowdoin College, July 25, 1902.*

## FAME

"We all know too sadly well that oblivion begins to devour the mightiest when dead, and has in all ages been so greedy as to overtake some men yet living. Human fame, even of those who are at pains to preserve their memories, is that the State of Maine, when called upon to place in the National Hall of Statuary the figure of the son she most willingly remembers, has passed by men of his time certainly more famous but not greater, and chosen William King. It seems also highly fitting, both as a memorial and as an example, that in that Hall which has so often echoed to the voices of many men whose fame seemed to fill the country but who are now forgotten, because their aims were selfish and their purposes petty, should stand for the statue of William King, placed there, not because the land is resonant with his name, but because he did his state enduring service."

—*Thos. B. Reed, in presenting to the House of Representatives the claims of William King for a place in Statuary Hall, Jan. 18, 1878.*

## WOMAN SUFFRAGE ADVOCATED

"No reason on earth can be given by those who claim suffrage as a right of manhood which does not make it a right of womanhood also. If the suffrage is to be given man to protect him in his life, liberty and property, the same reasons urge that it be given to woman, for she has the same life, liberty and property to protect. If it be urged that her interests are so bound up in those of man they are sure to be protected, the answer is that the same argument was urged as to the merging in the husband of the wife's right of property, and was pronounced by the judgment of mankind fallacious in practice and in principle. If the natures of men and women are so like that for this reason no harm is done by suppressing women, what harm can be done by elevating them to equality? If their natures be different, what right can there be in refusing representation to those who might take juster views about many social and political questions? \* \* \* We conclude then that every reason which in this country bestows the ballot upon man is equally applicable to the proposition to



bestow the ballot upon woman; that in our judgment there is no foundation for the fear that woman will thereby become unfitted for all the duties she has hitherto performed."

—*Thos. B. Reed, in a speech in the House in favor of Woman Suffrage.*

### HALF-TRUTHS

"Half-truths are simple, but the whole truth is the most complicated thing on earth. \* \* \* Talk about the 'survival of the fittest,' but they never complete the sentence. It is not the abstractly fittest who survive. The sentence really is, 'the survival of the fittest to survive;' that is the fittest for a given environment. If you cast a minnow and the magnificent bull of Bashan into the Atlantic Ocean, there is no question which is the nobler organism, the abstractly fittest, but the great bull of Bashan will perish and the minnow will survive in that environment."

### REBUKE TO A PHARISEE GAMBLER

"It is a curious thing, perhaps, but I never made a bet on a horse, a card, or anything else in my life," said a Congressman.

"I wish I could say that!" said a listening Senator.

"Why can't you?" asked Mr. Reed. "Our friend did."

### A STATESMAN

"A statesman is a successful politician who is dead," said Reed.

A correspondent telegraphed, "Why don't you die then and become a statesman?"

"No," said Reed, "Fame is the last infirmity of a noble mind."

### NECESSITIES

"Necessities may mean anything men are willing to work for.\* \* \* Even a peacock feather is a necessity in the early stages of glory."

### INVENTION

"It took 4,000 years of Pagan and 15 centuries of Christian civilization to produce a two-pronged fork, and another century to bring it into use."

### REBUKE TO WM. M. SPRINGER

Mr. Springer, a Representative from Illinois, was declaring with large solemnity that, in the words of Henry Clay, "he had rather be right than be President." "The gentleman need not be disturbed," interjected Speaker Reed, "he will never be either."

### TREAT THE DEAD TENDERLY

"If we ever learn to treat the living with the tenderness with which we instinctively treat the dead, we shall then have a civilization well worth distributing."

### THE PRESIDENT OF HARVARD

"The President of Harvard, in his lamented entrance into the Democratic party, was evidently thinking more of the courage of his convictions than the sense of them. \* \* \* Why should a man's advice, who is not and never seriously intends to be a candidate for office, be so much loftier than all others?"



## THE PEOPLE GOVERN

"Ultimately the people govern. There are ostentatious actors here and there, who stud the stage with panoply or with clanging arms, who seem to do many things; but in the end the popular feeling has its way."

## ALL CONGRESS CRAZY

Reed called on the family of a fellow-member of Congress, who was very ill, his wife said that he was out of his head much of the time and did not know what he was talking about. "He ought to come up to the House," replied Reed, "they are all that way up there."

## WRONG

"Wrong is never so weak as in its hour of triumph."

## "A KNOCK-DOWN ARGUMENT"

While speaking at South Berwick, near the end of his talk, a man came down in his seat with a crash. Reed at once secured the attention of his audience by saying, "Well, you must at least credit me with making a knock-down argument."

## SUBSTRACTING HUMAN INTELLIGENCE

Alluding to two of his colleagues in the House, he said, "They never open their mouths without substracting from the sum of human intelligence."

## WASHINGTON MALARIA

Much used to be said about Washington malaria, and one day someone suggested to Reed that the term was employed often to cover the effects of drinking too much whiskey. "Washington malaria," said he, "can be bought for about two dollars a gallon."

Thos. B. Reed was graduated from Bowdoin College, in 1860, at 21 years of age (B. 1839-D. 1902); was supported the last three months of his senior year by a loan from Wm. P. Fessenden of \$200, the latter's son being a classmate. When admitted to the bar, in California, Judge Wm. P. Wallace asked if he thought the Legal Tender Act, recently passed, was constitutional. Reed answered that he thought it was. Wallace thereupon said that another young man answered that morning the same question the other way. "We will recommend you both favorably, as we think that all young men who can answer great constitutional questions off-hand, ought to be admitted to the bar." After being Representative and State Senator, Attorney-General of the state, '70-'2, Member of Congress, '77-'99, twice Speaker, in which office, he earned the title of "Czar Reed," by boldly counting those present to make a quorum whether they voted or not (which the Supreme Court sustained as legal, and which was adopted by his political opponents), he was a candidate for the Presidency in '96 and in '99 resigned from Congress and joined as senior member the leading law-firm of Simpson, Thacher and Barnum, of N. Y. City.

Says Henry C. Lodge: "He was easily the greatest parliamentary leader I ever saw; the finest and most effective debater I have ever seen; and the only man then in public life who could have carried out his rule of counting a quorum during the stormy session of '89-'90."



## GEORGE ROBERTSON (1790-1874), Kentucky

### STARE DECISIS

"An adjudged point, unreasonable or inconsistent with analogy or principle, should not be regarded as conclusive evidence of the law, unless it shall have been long acquiesced in, or more than once affirmed, and unless on a survey of all material considerations, you feel that it is better to adhere to it than, by overruling it, to produce uncertainty and surprise. *Stare decisis* (decided cases) should be thus, and only thus, understood and applied. Stability and uniformity require that authority, even when conflicting with principle, should sometimes decide what the law is. But, in all questionable cases, follow the safer guides, reason and the harmony of the law in all its parts."—*Geo. Robertson, of Ky.*

### RULES OF CONDUCT FOR A LAWYER

"I never encouraged a litigious spirit, often induced antagonist parties to compromise, and oftener induced forbearance in frivolous and vindictive cases in which the least professional countenance would have bred vexatious litigation. I had more success in argument before the court than a jury. I never had much of the *ad captandum* (ability to catch the rabble). I was quite fluent and was accurate in style and pronunciation. I relied on lucid order and the logic of ideas, on the law and the facts. I never wrote out or committed any portion of a speech at the bar, nor was I accustomed to take notes of the testimony, finding that they confused and diluted my argument. I generally relied altogether on my memory, which, whenever it was my sole reliance, never failed as to any material fact or witness; and thus retaining all that was essential, and unembarrassed by nonessentials, my memory was more vivid, my ideas more consecutive and clear, and my argument more vigorous, concentrated and impressive. I was a clear, chaste and ingenious debator, but was never what is generally considered an orator. I succeeded in many hopeless cases, but seldom lost a good one. I charged low fees, and was so indulgent in the collection of them as to lose about half of my earnings. I never deceived a client, nor played on his ignorance or fear or confidence in me to extort an exorbitant fee, and invariably when I had done a client's business without a special contract I charged the minimum fee for the like service. As early as 1815 I had by study and practice become a good lawyer, and when only twenty-five years old I thought I knew more law than I think I do now at the mellow age of sixty-eight. This was not the effect of juvenile vanity so much as of comparative ignorance; and my case in that respect is every man's case who progresses in knowledge. The sciolist is dogmatic and vain because he is ignorant of the vast field of knowledge unseen by his circumscribed vision. The higher he rises the more extended becomes his horizon of unexplored knowledge; and the more he learns, the more he feels the insignificance and uncertainty of all human knowledge compared with a philosophical cyclopedia of universal truth; consequently the more he knows the more he sees which he does not know, and his humility increases *pari passu* with his progress in true science."

—*Was 15 yrs. Judge of Sup. Ct., Ky., and 7 yrs. Judge of the Appellate Court.*

### BRIEFED BOTH SIDES

"Made a habit of briefing for himself both sides of every cause which came before him for decision. He would assume the place of advocate



on the one side and summarize the points in favor of that side, and then would undertake to present arguments in favor of the opposite side. By this method he was enabled the more surely to evolve the real merits of every case which came before him.

—*Samuel Mackay Wilson, '4 Gt. Am. Lawyers,' 403-4.*

### FORENSIC ETHICS

The rules laid down by Judge Robertson and described by him in the phrase "Forensic Ethics," may be epitomized as follows:

1. To be a gentleman.
2. To deal fairly with and by one's clients.
3. To yield due deference to the courts and to demand a corresponding respect from the courts.
4. To be courteous, just and honorable in one's intercourse with professional brethren.
5. To avoid avarice, "A lawyer can hardly be both mercenary and just."
6. To insist, nevertheless, on adequate compensation for services fairly rendered.
7. Never to drum for clients.
8. To frown down all pettifoggery.

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### BEECHER'S ORATORY

"Henry Ward Beecher is, in my judgment, the greatest orator I ever heard, and easily takes a place among the greatest orators of the world. Less persuasive than Gladstone, less keen and repier-like than Wendell Phillips, less dramatic than John B. Gough, less polished than George William Curtis, less weighty than Daniel Webster, he combined in one ever-variable oratory the qualities of all, and was alternately persuasive, keen, dramatic, polished, weighty. His kaleidoscopic mind kept the habitual hearer always wondering what surprise would greet him in the next sentence. It was not, however, chiefly these oratorical qualities that gave him his influence; it was his rare combination of practical common sense and spiritual vision. He disregarded the phrases and forms of religion and cared only for its essential spirit. Under his leadership there was developed a church whose bond of union was spiritual, not intellectual."

—*Lyman Abbott's 'Reminiscences', 351.*

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### THE LIBRARY OF THE BIBLE

"The Bible is not a book, but a library; perhaps I should say a literature. It is composed of sixty-six different books, written by between forty and fifty different authors; written centuries apart, in different languages, to different peoples, for different purposes, in different literary forms. It is the selected literature of fifteen centuries; it includes law, history, poetry, fiction, biography and philosophy. It is to be read as a literature, judged as a literature. One may, therefore, reject a book from this collection of literature and yet believe in the literature. It is not like a painting which neither is or is not the works of one master; it is a gallery of paintings, in which some works may be originals, and others copies. To believe in the Bible is one thing, to believe in the canonicity of every book in the Bible is a very different thing. Luther believed in the Bible, though he rejected the Epistle of James."—*Lyman Abbott.*



## SAMUEL ROMILLY (1757-1818), England

### ROUSSEAU

“Though the writings of Rousseau contained many errors on the most important subjects, they may yet be read with great advantage. There is, perhaps, no writer so capable of inspiring a young mind with an ardent love of virtue, a fixed hatred of oppression, and a contempt for all false glory, as Rousseau; and, I ascribe, in a great degree, to the irrational admiration of him which I once entertained, those dispositions of mind, from which I have derived my greatest happiness throughout life.”

—*Samuel Romilly, England.*

He had a practice of from 8,000 to 9,000 pounds a year, \$40,000 to \$45,000. Died by his own hand, in his 62nd year, because of grief for his wife.

### FRANKLIN

“Of all the celebrated persons whom, in my life, I have chanced to see, Dr. Franklin, both from his appearance and his conversation, seemed to be the most remarkable.”

—*Romilly met Franklin in Paris, in 1783, when the former was 26 and the latter 81.*

### BURKE

“Certainly, never had any writer a more luxuriant imagination than Burke; he is more a poet than an orator; but do not you think that he indulges that poetical imagination to a fault. When he has once hold of a beautiful image, he forgets that its only use is to illustrate; the ornament becomes with him the subject, and he employs many phrases to decorate and enrich the figure, while the matter of his speech is quite neglected.”—*Romilly, in letter to Roget, of London, Mch. 24, 1782.*

### PITT'S ORATORY

“He (Pitt) possesses those talents which are said to have been peculiar to his father (Chatham), warmth of utterance, command of language, strength and clearness of reasoning, and, above all, an energy and irresistible vigor of eloquence.”

—*Romilly, in letter to Roget, London, June, 11 1782.*

### RELIGION

“You know how dangerous an engine religion is, when employed upon the minds of the ignorant; so dangerous, indeed, that it is formidable in any hands, however weak and contemptible.”

—*Romilly, speaking of the Lord George Gordon Riots, in London, by the Protestants against the Catholics, in 1780.*

### COMMON-PLACE BOOK

“As I read, I formed a common-place book; which has been of great use to me, even to the present day. It is, indeed, the only way in which law reports can be read with much advantage.”—*Sam'l Romilly.*



## RELIEF FOR SUFFERER TO DIE

“Considering what she (Mrs. Facquier) has gone through for many years past, one cannot call it a cessation of life, but the conclusion of a lingering death. \* \* \* Half the terrors of death are of our own creation.”—*Said by Romilly, in 1781.*

## TRUE OBJECT OF ORATORY

“The greatest eloquence is in itself but an object of vain and transient admiration. It is only when ennobled by the uses to which it is applied, when directed to great and virtuous ends, to the protection of the oppressed, to the enfranchisement of the enslaved, to the extension of knowledge, to dispelling the clouds of ignorance and superstition, to the advancement of the best interests of the country, and the enlarging the sphere of human happiness, that it becomes a national benefit and a public blessing. It is because the powerful talents, of which we are now deprived, have been uniformly exerted in the pursuit and promotion of such objects, that I consider our loss as one of the greatest which, in the present state of the country, we could possibly have sustained.”

—*From eulogy on Mr. Horner—Romilly.*

## URGED REFORM IN CRIMINAL LAWS

“I have long thought that it was the duty of every man, unmoved either by bad report or by good report, to use all the means which he possessed for the purpose of advancing the well-being of his fellow-creatures: and I know not any mode by which I can so effectually advance that well-being, as by endeavoring to improve the criminal laws of my country. \* \* \* It is not from light motives, from no fanciful notions of benevolence, that I have ventured to suggest any alteration in the criminal law of England. It has originated in many years’ reflection, and in the long-established belief that a mitigation of the severe penalties of our law will be one of the most effectual modes to preserve and advance the humanity and justice for which this country is so eminently distinguished. Since the last session of parliament, I have repeatedly reconsidered the subject: I am more and more firmly convinced of the strength of the foundation upon which I stand; and even if I had doubted my own conclusions, I cannot forget the ability with which I was supported within these walls; nor can be insensible to the humane and enlightened philosophy by which, in contemplative life, this advancement of kindness has been recommended. I cannot, therefore, hastily abandon a duty which, from my success in life, I owe to my profession; which, as a member of this house, I owe to you and to my country; and which, as a man blessed with more than common prosperity, I owe to the misguided and unfortunate.”—*Samuel Romilly*

In Henry Roscoe’s ‘Lives of Eminent British Lawyers,’ in which the lives of 14 English lawyers are sketched, the portraits only of Coke, Hale, Blackstone, Mansfield and Romilly are given, leaving out Selden, Guilford, Jefferies, Somers, Wilmot, Ashburton, Thurlow, Jones and Erskine, also sketched.

## WOMAN

“There is nothing by which I have through life more profited, than by the just observations, the good opinions, and sincere and gentle encouragement of amiable and sensible women.”—*Samuel Romilly.*



## ROMILLY A REFORMER OF CRIMINAL LAW

"The reform of the criminal law had long been advocated in vain by two large-minded members of the House of Commons, Sir Samuel Romilly and Sir James Mackintosh. As the law stood at the beginning of the century no less than 200 crimes were punishable by death. Anyone, for instance, who stole fish out of a pond, who hunted in the king's forests, or who injured Westminster Bridge, was to be hanged. Sometimes these harsh laws were put in force, but more often juries refused to convict even the guilty, preferring rather to perjure themselves by delivering a verdict which they knew to be untrue than send to death a person who had merely committed a trivial offense. Again and again the House of Commons had voted for an alteration of the law, but the House of Lords had obstinately refused to pass the Bills sent up to them with this object. In 1823 Peel brought in Bills for the abolition of the death penalty for about 100 crimes, and the House of Lords at last gave way, now that the abolition was recommended by a minister."

—*S. R. Gardiner's Student's Hist. of England*, p. 885.

## PLAN OF HIS LIFE, BY HIMSELF

"I had soon laid out the plan of my life (then about 20) which was to follow my profession of the law just as far as was necessary, and to aspire to fame by my literary pursuits. \* \* \* I began, therefore, to exercise myself in prose compositions; and, judging translations to be the most useful exercise for forming a style, I rendered into English the finest models of writing that the Latin language afforded; almost all the speeches of Livy, very copious extracts from Tacitus, the whole of Sallust, and many of the finest passages of Cicero. With the same view of improving my style, I read and studied the best English writers, Addison, Swift, Bolingbroke, Robertson, and Hume, noting down every peculiar propriety and happiness of expression which I met with, and which I was conscious that I should not have used myself."—*'1 Life of Romilly,' 30.*

## FRANCE INCAPABLE OF LIBERTY

"How could we ever be so deceived in the character of the French nation as to think them capable of liberty! Wretches, who, after all their professions and boasts about liberty, and patriotism, and courage, and dying, and after taking oath, after oath, at the very moment when their country is invaded and an enemy is marching through it unresisted, employ whole days in murdering women, and priests, and prisoners! Others, who can deliberately load their wagons full of victims, and bring them like beasts to be butchered in the metropolis; and then (who are worse than these) the cold instigators of these murders, who while blood is streaming round them on every side, permit this carnage to go on, and reason about it, and defend it, even applaud it and talk about the example they are setting to all nations. One might as well think of establishing a republic of tigers in some remote forest in Africa, as maintaining a free government among such monsters."

—*From letter to M. Dumont, Lincoln's Inn, Sep. 10, 1792. '2 Life of Romilly,' 4-5.*

## SCARLETT'S CHARACTERIZATION

"He was a man of reserved habits and cold demeanor; but under that exterior were covered the warmest and most generous emotions. When excited by controversy his temper was too easily provoked, and his opponent felt that he was very intolerant and sometimes too severe upon bad reasoning. As a speaker though he was often by the



force of his feeling led into something like declamation, yet he was successful in affecting the passions. He did not persuade by his rhetoric, but convinced by his logic. His reasoning was acute and perspicuous. His sagacity in detecting, and felicity in expressing the sophistry of his antagonist were among the first of his oratorical merits. These always made him happy and terrible in reply. His application to study and his quickness in understanding what he studied were never surpassed. His reading of all sorts was immense. I never met with a man who so universally was acquainted with ancient and modern literature and history. In the midst of his famous business he found time to read every book that had any real value. Even upon the subject of the last romance he was the best man to consult. There was something extraordinary in his facility of reading which enabled him to wade through a book in an hour which would have occupied most men a day. He did not stop at words or sentences, but took in almost a page at a glance."

—*Peter Campbell Scarlett's Memoir: 12 'Am. Law Review,' 49.*

### BROUGHAM ON HIS ABILITY AND ORATORY

"The observer who gazes upon the character of this great man is naturally struck first of all with its most prominent feature, and that is the rare excellence which we have now marked, so far above every gift of the understanding, and which throws the lustre of mere genius into the shade. An extraordinary reach of thought; great powers of attention and of close reasoning; a memory quick and retentive; a fancy eminently brilliant, but kept in perfect discipline by his judgment and his taste, which was nice, cultivated and severe, without any of the squeamishness so fatal to vigor,—these were the qualities which, under the guidance of the most persevering industry, and with the stimulus of a lofty ambition, rendered him unquestionably the first advocate and the most profound lawyer of the age in which he flourished; placed him among the ornaments of the Senate; and would in all likelihood have given him the foremost place among them all, had not the occupation of a laborious profession necessarily engrossed a disproportionate share of his attention, and made political pursuits fill a subordinate place in the scheme of his life.

"His eloquence united all the graces of oratory, both as regards the manner and the substance. No man argued more closely when the understanding was to be addressed; no man declaimed more powerfully when indignation was to be aroused or the feelings moved. His language was choice and pure; his powers of invective resembled rather the grave authority with which the judge puts down a contempt, or punishes an offender than the attack of an advocate against his adversary and his equal. His imagination was the minister whose services was never for an instant admitted. His sarcasm was tremendous, not always very sparingly employed. His manner was perfect, in voice, in figure, in a countenance of singular beauty and dignity; nor was anything in his oratory more striking or more effective than the heartfelt sincerity which it throughout displayed, in topic, in diction, in tone, in look, in gesture.  
\* \* \* \* \* His political adversary, Mr. Charles Long, afterwards Lord Farnborough, was wont to say, and he was one of the most experienced and correct observers, that he never was out of his place while Romilly spoke without finding that he had cause to lament his absence."—1 *'Historical Sketches of Statesmen,' 250-3.*



## THEODORE ROOSEVELT (1858-1919), New York

### TEST OF A BOOK

"Of course there are books which a man or woman uses as instruments of profession—law books, medical books, cookery books and the like. I am not speaking of these, for they are not properly 'books' at all; they come in the category of time tables, telephone directories and other useful agencies of civilized life. I am speaking of books that are meant to be read. Personally, granted that these books are decent and healthy, the one test to which I demand that they all submit is that of being interesting. If the book is not interesting to the reader, then in all but an infinitesimal number of cases it gives scant benefit to the reader. Of course any reader ought to cultivate his or her taste so that good books will appeal to it, and trash won't. But after this point has once been reached, the needs of each reader must be met in a fashion that will appeal to those needs. Personally the books by which I have profited infinitely more than by any others have been those in which profit was a by-product of the pleasure; that is, I read them because I enjoyed them, because I liked reading them, and the profit came in as a part of the enjoyment."—*Theodore Roosevelt in his Autobiography.*

### UNDEBATABLE THINGS

"There can be no greater waste of time than to debate about undebatable things."—*Theodore Roosevelt.*

NEUTRALITY: "Never be neutral between right and wrong."  
—*Theo. Roosevelt.*

### RELIGIOUS TOLERATION

"I have no patience with those who attack, who would destroy a man's belief in religion,—no patience with those who would convert the Jew *en masse*, or the Catholic. More likely than not, where they succeed only in destroying something—they take something real away and give nothing in return, leaving the victim bankrupt. I am always sorry for the faithless man, just as I am sorry for the woman without virtue."

"Most men, I believe, are good citizens according to their lights. \* \* \* After all, one's religion is a private thing and one is apt to be misunderstood. So, if I should say publicly or you should print what I have said here today, some half-baked ass of a preacher would attack me tomorrow for endorsing the Pope; another, because I am a Mohammedan at heart; and another would see in my toleration of the rabbi proof that my right name is Rosefelt or Rosenthal."

—*To John J. Leary, Jr., in 1916,—'Talks with T. R.' 66-9.*

### WELL-MEANING FOOLS

"I have found that one of the real dangers of life are people who mean well. You never can tell what they will do. You can tell, or at least be on guard against those who do not mean well. Some of the greatest embarrassments of my life have been caused by people with the best intentions that 'did not know it was loaded'. I am not afraid of the crook who means evil. I can usually take care of him. But the well-meaning-fool—no man can guard against him, or his embarrassments.

—*To John J. Leary, Jr., after being pelted with 3000 peonies by admiring friends in Dayton, O.—'Talks with T. R.' 287-8.*



## SINCERITY

"Isn't it because the crowd always knows I am sincere that they are with me? It surely must be that in the years I have been in public life, folks have always found me sincere. Men do not always agree with me; in fact, many have been known to differ with me very seriously. Men who do not know me may doubt my sincerity, but no one who knows me does. At bottom, I do not believe any of the 'Old Guard', Bill Barnes included, would question my sincerity. They know better. \* \* \* An orator which I am not, would get a crowd perhaps, but he could not hold them if he lacked sincerity, or if the people thought he did. We have all seen orators come and go, but none ever remained to a hold on any perceptible part of the public who at least did not carry the impression of sincerity. I have never hesitated to say a thing because it might be unpopular any more than I have ever found it at all necessary to say a thing I did not believe merely because they might be popular. In the end, as Emerson says, truth, however unpleasant, is the safest traveling companion. I have never found it at all necessary to pussyfoot or indulge in pleasing sophistries to hold any crowd. On the other hand, I have never hesitated to tell folks unpleasant things, I thought they should be told, any more than I have been afraid of hecklers. \* \* \* If a man is sincere—he has nothing to fear. If he isn't sincere—he has no business speaking. In the long run, sincerity must be the test of any public man."

—Said by Roosevelt to Jno. J. Leary, Jr., 1916. *'Talks with T. R.,'* 70-4.

## FIGHT FOR YOUR COUNTRY AND YOUR RIGHTS

"I want my country to be right; I hope she always will be right; but right or wrong, whatever she gets into I am going to be with her until she gets out. Then if there's any correcting to do, I'll try and do my share. And I am not prepared to concede the possibility of error in that doctrine by agreeing to debate it with anybody."

"It is said to be bad ethics, just as it is said to be bad ethics, to teach a boy to defend himself or his baby brother, or his sister, or his mother. Some good people hold that a boy who gets into a fight, whether he be right or wrong, should be punished. I do not. If one of my boys was a bully, I'd try to thrash it out of him. If he would not defend himself against a bully, I'd thrash him till I had some degree of manhood in him. He'd require but one thrashing."

—Said by Roosevelt to John J. Leary, Jr. *'Talks with T. R.,'* 178.

## DEMOCRACY

"Our democracy must prove itself effective in making the people healthy, strong and industrially productive, in securing justice, in inspiring intense patriotism, and in making every man and woman within our borders realize that if they are not willing to serve the nation in time of need against all comers in war, they are not fit to be citizens of that nation in time of peace."

## THE MONEY GRUBBER

"Money *per se* has never meant anything to me. I have never had so much that I did not have to work, and usually, I have had to consider carefully and plan my outlays. Otherwise I would have become bankrupt. But I have always had all I needed for real comfort for myself and family in the modest style we would have preferred to live had we had the wealth of Croesus. In more recent years I have had a comfortable surplus, but it has meant very little to me except for what we may have been able to do with it."



"Mind you, I do not undervalue money and I am not talking against thrift. What I mean is that the really wise person is he who tries to see money in its true perspective. The young man who is careful and thrifty—not miserly, but thrifty—makes the best citizen. Conversely, the man with a lot more money than he needs, who spends in lavish display, is not a good citizen, though he may think he is. His example to others, not so wealthy as he is bad; his influence upon others is bad. It all comes down to the question of service. The man with money, in an industry producing wealth and enriching the community, is doing real service. The man who, having money, devotes himself to public service, not necessarily politics, because he is free from the need of earning a living, is a good citizen. His money is a blessing to him and a service to the community. But the money grubber—I do not understand him. I am sorry for him, I'm Pharisee enough to rejoice that I am not as he is."

—Roosevelt to Jno. J. Leary, Jr., *'Talks with T. R.'*, 208.

### BOASTING OF ONE'S SUPERIORITY

"Whenever you find a man going around declaring he is as good as somebody else, rest assured he does not believe he is, and his declaration of equality, or superiority is, in effect, an admission of inferiority. The man who is as good as the other fellow does not have to advertise the fact."—*Theo. Roosevelt. 'Talks with T. R.'*, 225.

### ELIHU ROOT

"Root's life you might say, was one long fight. He had to fight for everything he ever got. All his life he'd been doing business with big, domineering, strong-bitted men like the elder Morgan—men in the habit of having their own way in all things. With them, Root simply had to stand up and fight to get them to do things the way he saw they ought to be done.

"I haven't the slightest doubt that on many an occasion he had to become rather strenuous to make his points stick, but I'll wager he made them stick and that his employers were glad afterwards that he had made them stick. It was his idea of loyalty to give his associates the full benefit of everything he had in view, even if he had to fight to make them take it.

"These habits he brought into the Cabinet and these made him, as I've said, the most valuable member. I have been fortunate in having a few such advisers as Root. \* \* \* The man who cannot stand to have his plans and ideas criticised is a fool. The wise man will welcome criticism, so long as it is honest and intelligent. I know, and you do, men who want no one about that does not agree with them, men who are afraid of being told unpleasant truths. Such men are fools. In a long journey, as Emerson says, 'The truth, however unpleasant, is the safest traveling companion'."—*'Talks with T. R.'* 219-21.

### HENRY FORD

"Henry Ford is a pretty good man for making cheap automobiles. He makes a good car for the money and in his sphere has done a very good work. But he won't stick to his sphere. He would instruct Cosmos.

"It would not be so bad, if he knew anything about the matters outside of automobiles that he attempts to manage and direct. He does not seem to have the faintest idea of American history, or any history for that matter; he knows nothing of world politics, yet he sets himself up, with the aid of an army of press agents, as the man who must teach everybody. He has no conception of what we mean by Americanism and has an extreme idea of the importance and power of money. He is



ignorant, yet because he has been so successful in motors, many, many persons, hardly as ignorant as himself, think him wise in all things and allow him to influence their views. Henry, like Barnum, has been a great advertiser. I do not say his peace-ship was an advertising dodge—I will give him credit for being sincere there—but I won't say that he has not been given credit for a lot of philanthropy that was merely good business. Others of his schemes given much publicity, are imaginings that in others would attract no attention. He and his son Edsel make a precious pair. The exempting of that young man was a glaring bit of injustice. Had I had my way, he'd have gone into the trenches and taken his chances just as any poor man's son had to go and take his chances. Instead, he is safe in Detroit. Cases like this make fine material for demagogues who try to tell the ignorant this is a government for rich men."—*'Talks with T. R.'* 356-7.

### BE CAREFUL OF FAVORS

"I shall have to decline with thanks. If I allow him to do anything for me, I shall have to do something for him later on. He knows that as well as I do, and I am simply not going to be under any obligation to him. He's not the kind I want to be beholden to. A man should be as careful in accepting favors as he should be in making promises. If he's careless in either, he soon finds he's in trouble of one sort or another. There's where many a man in politics has wrecked himself, exactly as men in business have gone bankrupt endorsing notes for friends."

—*'Talks With T. R.'*

### WOODROW WILSON

"Mr. Wilson never had an ideal in his life; he is merely a selfish politician. \* \* \* A case in point is this cry on which he was re-elected: 'He kept us out of war.' No one knows better than Mr. Wilson that Germany was at war on us and that under his direction we were backing into war stern foremost. It was a catch-cry, a cry calculated to attract the vote of the pacifists and the peace-at-any-price people. With its honesty, Mr. Wilson had no concern. His only interest was in the way it might work, might advance his political fortunes. \* \* \* In time Mr. Wilson will be the best damned man in America since the days of James Buchanan and Andy Johnson, but that time is not now. When that time comes I shall be sorry for Mr. Wilson. He will not, however be sorry for himself. He will figuratively gather his cloak about him and from his great height look down upon and be sorrowfully contemptuous of those pigmies of mortals unable to see things as he sees, and has seen them. It will never occur to him that those who have ceased to acclaim him may by any chance be right and he be wrong."—*'Talks with T. R.'* 323-7.

ROOSEVELT'S MOTTO: "All for each, and each for all."

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### GREAT LEADERS—SUMNER AND CONKLING

"Great leaders, like Sumner and Conkling, could not be burlesqued; they were more grotesque than ridicule could make them; even Grant, who rarely sparkled in epigram, became witty on their account; and their egotism and factiousness were no laughing matter. They did permanent mischief, as Garfield, Blaine and even McKinley and John Hay were to feel."—*'The Education of Henry Adams,'* 261.



## JOHN ROSS (1770-1834), Pennsylvania

### THE COMMON LAW VENERATED

"The common law is truly entitled to our highest veneration; and although it has been said by some to have been instituted by Brutus, the grandson of Aebeas, and the first King of England, who died when Samuel was judge of Isreal, and who wrote a book in the Greek tongue, which he called 'The Laws of the Britons,' and which he had collected from the laws of the Trojans, it is nevertheless not entitled to our veneration on account of its antiqity; for nearly all that is valuable in it is comparatively of modern date. Neither is it entitled to our respect on account of the ancient, absurd, and subertitious modes of trial, none of which have the slightest resemblance to our present trial by jury. Still less does it deserve our admiration on account of the feudal system, which imposed a restraint upon every effort to improve the jurisprudence of the country, and which prevented the adoption of those maxims of justice and equity which now render it the admiration of the enlightened jurist, and the favorite of the people. It is, however, entitled to our veneration, because it has, within the last two centuries, been moulded by the wisdom of the ablest statesmen, and a succession of learned and liberal-minded judges into a flexible system, expanding and contracting its provisions, so as to correspond to the changes that are continually taking place in society by the progress of luxury and refinement. As the youthful skin of a vigorous child expands with its growth and accommodates itself to every department which the body, in its progress to maturity, makes of its powers, capacities, and energies, so does the common law, in order to suit the exigencies of society, possess the power of altering, amending, and regenerating itself."

—*Justice John Ross. Snowdown v. Warder, 3 Rawle (Pa.), 103-4 (1831).*

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### DEBTORS

"What are the debtors in this country? They are the aspiring, the hopeful, the energetic, the audacious. They are the upbuilders, the designers, the men of initiative, of executive power and achievement. They are the constructive force in every community. As probably nine-tenths of the business of America depends in one form or another on credit, any system which made the dollars of a debt more valuable at the date of payment than at the date of borrowing was a system of robbery."

—*Senator John P. Jones, of Nevada, U. S. Senate, May 12, 1890.*

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### HENRY ADAMS

"By far the most valuable work on the early Presidencies is the monumental study of Jefferson and Madison by Henry Adams, whose nine volumes rest on prolonged research in both hemispheres and present a lucid record of foreign and domestic policy during sixteen eventful years "

—*G. P. Gooch's 'History and Historians of the 19th Century', 409.*



ELIHU ROOT (1845- ), New York

### AGAINST WOMAN SUFFRAGE

"I am opposed to granting suffrage to women because I believe it would be a loss to woman, and an injury to the State. Suffrage implies not merely the casting of the ballot, but if it means anything, it means entering upon the field of political strife, and politics is modified war. In politics, there is struggle, strife, contention, bitterness, excitement, agitation, everything adverse to the true character of woman. Woman rules today by the sweet and noble influence of her character. Woman, in strife, becomes hard, harsh, unlovable, repulsive. True government is in the family, the true throne, in the household. The highest exercise of power is that which forms the conscience, influences the will, controls the impulses of men, and there today woman is supreme, and woman rules the world."—*At Albany, N. Y.*

### SELF-RELIANCE, ANECDOTE

While making preparations to enter upon a law course in New York City, his father wishing to be helpful, offered to supply him with letters of introduction to a number of people of influence in the metropolis. "No," the young man answered, "I am starting out to do this thing myself. I am going to make my own friends without any family pull. I want to find out whether I am a man or a mouse."

—*Furnished by Albert W. Macy.*

### ROOT ON THE WILSON ADMINISTRATION

"The events of the last few years have taught us many lessons. We have learned that civilization is but a thin veneer, thinly covering the savage nature of man; that conventions, courtesies, respect for law, regard for justice and humanity, are acquired habits, feebly constraining the elemental forces of man's nature against wild beasts and savage foes. We have been forced to perceive that a nation which fulfills the conditions on which alone it can continue to exist, which preserves its independence, and the liberty of its people, and makes its power a shield for the rights of its citizens, must deal with greed and lust of conquest and power, and indifference to human rights. We have seen that neither the faith of treaties nor the law of nations affords protection to the weak against the aggression of the strong. We have begun to realize that America, with its vast foreign trade, with its citizens scattered over the whole earth, with millions of aliens upon its soil, with its constantly increasing participation in world-wide efforts for the benefit of mankind, with a thousand bonds of intercourse and intimacy, uniting it to other nations, is no longer isolated; that our nation can no longer live unto itself alone, or stand aloof from the rest of mankind; that we must play some part in the progress of civilization, recognize some duties as correlative to our rights. For the first time within the memory of men now living, the international relations of the United States, long deemed of trifling consequence, are recognized as vital. How can this nation which loves peace and intends justice, avoid the curse of militarism, and at the same time, preserve the independence, defend its territory, protect the lives and liberty and property of its citizens? How can we prevent the same principles of conduct, the same forces of military power which are exhibited in Europe from laying hold upon the vast territory, and practically undefended wealth of the new world? Can we expect im-



munity? How shall we play our part in the world? Have selfish living and factional quarreling and easy prosperity, obscured the spiritual vision of our country? Has the patriotism of a generation never summoned to sacrifice become lifeless? Is our nation one, or a discordant multitude? Have we still national ideals? Will anybody live for them? Or are we all for ease and comfort and wealth, at any price? Confronted by such questions as these and the practical situations which give rise to them, is the country satisfied to trust itself again in the hands of the Democratic party?

"When a president and secretary of state have been lawfully established in office, the power of initiative in foreign affairs rests with them. The nation is in their hands, theirs is the authority, and theirs the duty, to adopt and to act upon policies, subject to such laws as Congress may enact within Constitutional limits. Parliamentary opposition can take no affirmative step; can accomplish no affirmative action. The expression of public opinion can do nothing except as it produces an influence upon the minds of those officers who have the lawful power to conduct our foreign relations. Their policy is the country's policy, because it is they who are authorized to act for the country. While they are working out their policy all opposition, all criticism, all condemnation, are at the risk of weakening the case of one's own country and frustrating the efforts of its lawful representatives to succeed in what they are seeking to accomplish for the country's benefit. An American should wish the representatives of his country to succeed whatever may be their party, unless there be wrong-doing against conscience. However much he may doubt the wisdom of their course, he should help them where he can, and refrain from placing obstacles in their way.

"But when the president and secretary of state have acted, and seek a new grant of power, they and the party which is responsible for them, must account for their use of power to the people from whom it came, and the people must pass judgment upon them, and then full and frank public discussion becomes the citizen's duty."

—*From an Address as temporary chairman of the N. Y. Republican Convention, Feb. 15, 1916. Mr Root then arraigns the administration for its course in the Mexican and European Wars.*

## THREATS

"Extreme and belligerent expression, unsupported by resolution, is weak and without effect. No man would draw a pistol who dares to shoot. The government that shakes its fist first, and its finger afterwards, falls into contempt."—*Same address as above.*

## DEMOCRATS CONTROLLED WITH CLUB

"The Democrats in Congress are never controlled, except with a club, and government with a club is always spasmodic and defective."

—*Same address as above.*

## INTERNATIONAL LAW

"There can be no crime which leaves a man without legal rights. One is always entitled to insist that he shall not be punished, except in accordance with law, or without such a hearing as the universally accepted principles of justice demand. If that right be denied to the most desperate criminal in a foreign country, his own government can and ought to protect him against the wrong."

—*Upon 'The Relations between International Tribunals of Arbitration and The Jurisdiction of International Courts,' Washington, D. C., Apr. 23, 1909.*



## THE SUPREME COURT OF THE UNITED STATES

"Our people here in the United States are probably more ready to assent to such a view as this (arbitration of controversies in an International Court) than the people of any other country in the world, because we have been long accustomed to the existence of a great tribunal, a part of whose duty it is to sit in judgment upon the question whether the governments of the sovereign states and the government of our own nation, in their acts, conform to the great principles of justice and right conduct embodied in our Constitution. That arrangement of embodying the eternal principles of justice in a written instrument, investing a court with the power to declare all acts of Congresses, and legislatures, and Presidents, and Governors, void and of no effect, when they fail to conform to these principles, is, it seems to me, the greatest contribution of America to the political science of the world. \* \* \* It is rather a new idea, and it will take time and argument and exposition to bring the world to the acceptance of that view."

—*'The Importance of Judicial Settlement', Washington, D. C., Dec. 10, 1910.*

## THE INTANGIBLE AND SENTIMENTAL THINGS RULE THE WORLD

"After all, what rules the world, the one thing that is eternal and all powerful, is the intangible and sentimental."—*From same address as above.*

## WAR

"War was forced upon mankind in his original civil and social condition. The laws of the survival of the fitting, led inevitably to the survival and predominance of the men who were effective in war, and who loved it because they were effective. War was the avenue to all that mankind desired. Food, wives, a place in the sun, freedom from restraint and oppression, wealth of comfort, wealth of luxury, respect, honor, power, control over others, were sought and attained by fighting. Nobody knows through how many thousands of years fighting men have made a place for themselves, while the weak and peaceable have gone to the wall. Love of fighting was bred in the blood of the race, because those who did not love fighting were not suited to their environment."

—*From Noble Prize Address, prepared by Mr. Root to deliver in person at Christiania, Norway, Sep. 8, 1914, but delivery of which was prevented by the outbreak of the European War.*

## FRANCIS LIEBER

"We cannot fail to set a high estimate upon the services of the man (Lieber) who gave form and direction and effectiveness to the civilizing movement by which man at his best, through the concurrence of nations, imposes the restraint of rules of right conduct, upon man at his worst, in the extreme exercise of force."

—*From lecture on 'Francis Lieber, Washington, D. C., Apr. 24, 1913.*

## THE REAL MONROE DOCTRINE

"The safety of the United States demands that American territory shall remain American. \* \* \* The declaration of Monroe was that the rights and interests of the United States were involved in maintaining a condition, and the condition to be maintained was the independence of all the American countries."

—*From Address, in Washington, D. C., Apr. 24, 1914, upon 'The Real Monroe Doctrine.'*



## THE JUDICIAL FACULTY

"In an international court of arbitration, we need a court of permanent judges, who will have no other occupation, and no other interest but the exercise of the judicial faculty under the sanction of that high sense of responsibility which has made the courts of justice in the civilized nations of the world the exponents of all that is best and noblest in modern civilization."

—*'The Hague Peace Conference,' an Address in opening the National Arbitration and Peace Congress, in New York City, Apr. 5, 1907.*

## CHARLES E. HUGHES

Congratulating Chas. E. Hughes, after his defeat for the Presidency, at a Banquet, in N. Y. City, Jan. 23, 1917, Mr. Root, put it, this way:

"I am glad Mr. Hughes is here, but I wish he were somewhere else."

## THE RECALL OF JUDGES AND DECISIONS

"Under the first of these proposals, if a specified proportion of the voters are dissatisfied with a judge's decision, they are empowered to require that at the next election, or at a special election, called for that purpose, the judge shall be permitted to continue in office, or some other specified person shall be substituted in his place. This ordeal differs radically from the popular judgment which a judge is called upon to meet, at the end of his term of office, however short that may be, because when his term has expired he is judged upon his general course of conduct while he has been in office, and stands or falls upon that as a whole. Under a recall, a judge may be brought to the bar of public judgment immediately, upon the rendering of a particular decision, which excites public interest, and he will be subject to punishment if that decision is unpopular. Judges will naturally be afraid to render unpopular decisions. They will hear and decide cases with a stronger incentive to avoid condemnation themselves than to do justice to the litigant or the accused. Instead of independent and courageous judges, we shall have timid and time-serving judges. That highest duty of the judicial power, to extend the protection of the law to the weak, the friendless, the unpopular, will in a great measure fail. Indirectly the effect will be to prevent the enforcement of the essential limitations upon official power, because the judges will be afraid to declare that there is a violation when the violation is to accomplish some popular object.

"The recall of decisions aims directly at the same result. Under such an arrangement, if the courts have found a particular law to be a violation of one of the fundamental rules of limitation prescribed in the Constitution, and the public feeling at the time is in favor of disregarding that limitation, in that case an election is to be held, and if the people in the election vote that the law shall stand, it is to stand, although it be a violation of the Constitution; that is to say, if at any time, a majority of the voters of a State (and ultimately the same would be true of the people of the United States), choose not to be bound, in any particular case, by the rule of right conduct, which they have established for themselves, they are not to be bound. This is sometimes spoken of as a popular reversal of the decisions of the courts. That I take to be an incorrect view. The power which would be exercised by the people under such an arrangement would be, not judicial, but legislative. The action would not be a decision that the court was wrong in finding a law unconstitutional, but it would be making a law valid which was invalid before, because unconstitutional. In such an election the majority of the voters would make a law where no law had existed before; and they would make that law in violation of the rules of conduct by which the



people themselves had solemnly declared ought to be bound. The exercise of such a power, if it is to exist, cannot be limited to the particular cases which you or I or any man now living may have in mind. It must be general. If it can be exercised at all, it can and will be exercised by the majority, whenever they wish to exercise it. If it can be employed to make as to violate the Constitution, it can be employed to prohibit the worship of an unpopular religious sect, or to take away the property of an unpopular rich man, without compensation, or to prohibit freedom of speech and of the press in opposition to prevailing opinion, or to deprive one accused of crime, of a fair trial when he has been condemned already by the newspapers. In every case, the question whether the majority shall be bound by those general principles of action which the people have prescribed for themselves will be determined in that case by the will of the majority, and, therefore, in no case, will the majority be bound except by its own will at the time.

"The exercise of such power would strike at the very foundation of our system of government. It would be a reversion of the system of the ancient republics where the state was everything, and the individual nothing, except as a part of the state, and where liberty perished.

"It would be a repudiation of the fundamental principle of Anglo-Saxon liberty which we inherit and maintain, for it is the very soul of our political institutions that they protect the individual against the majority. 'All men,' says the Declaration, 'are endowed by their Creator with certain unalienable rights.' Governments are instituted to secure these rights. The rights are not derived from any majority. They are not disposable by any majority. They are superior to all majorities. The weakest minority, the most despised sect, exist by their own right. The most friendless and lonely human being on American soil holds his right to life and liberty and the pursuit of happiness, and all that goes to make them up, by title indefeasible against the world, and it is the glory of American self-government that by the limitations of the Constitution we have protected that right against even ourselves."

—*'Essentials of the Constitution,' at Princeton University, Apr. 16, 1913.*

### TRUTHS MUST BE PROVED—ALWAYS

"A very wise man has said that 'short of the multiplication table there is no truth and no fact which must not be proved over again as if it had never been proved, from time to time.'"

—*From 'Experiments in Government,' at Princeton University, Apr. 15, 1913.*

### THE UNITED STATES SENATE

"The Senate exercises a power more varied than any other deliberative body in the world; shares in the legislative and judicial functions; with control over the laws providing for the raising and the expenditure of revenue, through its constitutional power of amendment; with control over the appointments to offices by the necessity of its consent to the ratification of treaties; with the function, that highest of all judicial functions, constituting it the court for the trial of impeachments, after a century and a quarter of life, I declare to you and to my countrymen that the Senate of the United States has performed its duty loyally, faithfully and competently, and has furnished to the history of the country a line of illustrious names and a record of great achievements which provides one of the most convincing proofs the world has yet had that popular government through representative institutions is a possibility among men."

—*'Direct Election of Senators,' in U. S. Senate, Feb. 10, 1911.*



## PRESIDENTIAL ELECTION—EDUCATIONAL

"The greatest, most useful educational process ever known to the world occurs every four years, in the United States, when during a presidential election, some 15,000,000 voters are engaged for months in reading and hearing about great and difficult questions of government, in studying them, in considering, and discussing, and forming matured opinions about them. We sometimes hear complaints that elections interfere with business and come too frequently. On the contrary, nothing else is so valuable and important for business, because it is this educational process that is laying the solid foundation of sound judgment, sober self-restraint, and familiarity with political questions among the governing mass, upon which the security of all business depends. \* \* \* The expenditure, during the campaign of 1912, amounted to only about three and a half cents per capita for the people of the United States, on one side, and the great bulk of that is applied to the political education of voters."

—*'The Citizens' Part in Government,' delivered before Yale University, May, 1907.*

## SOCIALISM

"Socialists put limitations upon the right of private property, and limitations upon individual opportunity, and their theories are still more widely enforced among all that part of the wage-workers who believe in putting a limit upon the amount of work which each workman shall be permitted to do in his day's labor, so that the most industrious, skillful, and ambitious workman shall be permitted to do no more and to earn no more than the most dull, idle and indifferent workman. A common benefit of property and a common standard of exertion are liable to be substituted for all inequalities of fortune and achievement. After many centuries of struggle for the right of equality there is some reason to think that mankind is now entering upon a struggle for the right of inequality. It remains to be seen how democracy will work under these new conditions."

—*'The Citizens' Part in Government,' Yale Lectures, May, 1907.*

## CONDITIONS OF A LAWYER'S SUCCESS

"They are severe. He must acquire sound learning; he must be trained to clear thinking and to simple and direct expression; he must be both intellectually and morally honest; and he must have the quality of loyalty to every cause in which he enlists. He should have the tact which comes from real sympathy with his fellowmen, and he will be far better for the saving grace of a sense of humor which brings with it a sense of proportion and of good judgment.

"The lawyer who exercises these qualities is certain of professional emoluments greater than those received by the members of any other profession, old or new. But he is certain of far more than this. As he goes on in life a multitude of personal relations grow up between him and his clients. Some of these clients are strong and able, and with them the relation is mutual respect and helpfulness. Others are weak and dependent, and to them he furnishes not merely learning, but support and strength of character and moral fiber. The feeling of all is characterized by confidence and trust. The growth of his own character responds to the requirements of this esteem. In time other people come to feel and to adopt, to a great degree, the opinion and attitude of the clients who knew him best. And so he rounds out his career in possession of that priceless solace of age, the respect and affection of the community which makes up this world."

—*'Duties of American Lawyers,' an Address before the Yale Law School, New Haven, Conn., June 27, 1904.*



## RESPONSIBILITY OF AMERICAN BAR

"How are we to meet the future, and what is the responsibility of the bar, that is the guardian of American law, toward meeting that future? It is not a matter of opportunism; it is not a matter of temporary expediency. The situation cannot be dealt with by merely doing what seems to you and to me to be the expedient thing in this situation and in that situation today or tomorrow. Our people must base themselves upon a foundation of principle. They must renew their loyalty to ideals. And the basic principle is the principle of American law.

"It is the principle of individual liberty which has grown out of the life of the Anglo-Saxon race and has been waxing strong during all the seven hundred years since Magna Charta. That was the formative principle that made America, the United States, and Canada, from the Atlantic to the Pacific, from the Gulf to the frozen north, English-speaking, pursuing the course of the common law, preserving liberty and doing justice. That the power of that principle of individual liberty that developed in the life of our race is the greatest formative power in the history of the world. Over against it stands the principle of the State. Upon the one hand is the declaration in that great instrument, the value of which we hardly yet appreciate, the immortal Declaration, penned by Thomas Jefferson, that all men are created with unalienable rights, which governments are created to preserve. On the other hand is the principle that States are created with supreme rights, which all individuals are bound to observe. The one centers the system of law and order and justice upon the inalienable right of the individual; the other centers the system of law and order and justice upon the rights of the State, which subordinates the rights of the individual, and that is the fundamental question which is being fought out upon the battle-fields of Europe.

"Here in this country we have enjoyed liberty and order so long that we have forgotten how they came. Our people assume that they come as the air comes, to be breathed; they have assumed that they will, of their nature and by their own force, continue forever, without effort. Ah, no! Liberty has always been born of struggle, it has not come, save through sacrifice and blood of martyrs and the devotion of mankind. And it is not to be preserved except by jealous watchfulness and stern determination always to be free."

—'Responsibility of the Bar,' at Annual Dinner of N. Y. Bar Assn., Jan. 15, 1916.

## ADMINISTRATION OF JUSTICE

"What can the bar do to improve the administration of justice in the United States? First, we can improve our law-making. We make too many laws. According to a count made in the Library of Congress, our national and state legislatures passed 62,014 statutes during the five years from 1909 to 1913 inclusive. During the same five years 65,379 decisions of the national and State courts of last resort were reported in 630 volumes. Of these statutes 2,013 were passed by the National Congress, and of these decisions 1,061 were rendered by the Supreme Court of the United States. Many of these statutes were drawn clumsily, carelessly, ignorantly. Their terms are so vague, uncertain, doubtful, that they breed litigation inevitably. \* \* \* This could be somewhat regulated by a competent reference library for the use of the legislative body, with a competent library force to furnish statistics, historical data, and information pertinent to proposed measures. Another is the establishment of a drafting bureau, or the employment of expert counsel, subject to be called upon by the legislative body and its committees, to put in proper form measures which are desired, so that they will be drawn with reference to previous legislation, and existing decisions of



the courts; so that they will not duplicate existing statutes, will not be inconsistent with existing statutes, will not ignore the decisions of the courts, will not undertake to do anything in one way which is already done in another, and will be written in good English, brief, simple, clear, and free from ambiguity and inconsistency. There is a useless lawsuit in every useless word of a statute, and every loose, sloppy phrase plays the part of the typhoid carrier."

—*'The Layman's Criticism of the Lawyer,' before American Bar Assn., Washington, D. C., Oct. 20, 1914.*

## MAGNA CHARTA

"The ideas embodied in our constitutions, constitutions which are but the expression of the conception of individual liberty that has grown through a thousand years of Anglo-Saxon freedom, proved vital to protect the individual against the tyranny of government. The ideas that were forced upon King John, when he signed the Magna Charta, that great and conquering conception of liberty which has been the formative power moulding the social and political life of the hundred and ten million people who inhabit this continent north of the Rio Grande, prevailed and became effective as applied to the daily life, the protection, the prosperity and happiness of the little brown brothers in the Philippines; of the men whom we fought the war of 1898, to liberate in Cuba and our wards in Porto Rico. Surely no lawyer was ever more fortunate than in the opportunity to help in the demonstration of the eternal verity of the principles of justice and liberty which underlie all the efforts and struggles of our American war."

—*'The Lawyer of Today,' New York City, Mar. 13, 1915.*

## AGAINST THE RECALL OF JUDGES

"If you undertake to say to a judge that if he decides against the popular will that finds itself restrained by the declaration of one of these principles of conduct under the Constitution, he shall be recalled, you make a coward of him. One of these principles is that our natures are weak, prone to error, subject to fall into temptation and be led away by impulse, and the other, on the great fundamental principle that there is only one way in which a man can control his own tendencies to error, and that is by the recognition, the adoption and enforcement upon himself of declared principles of right conduct.

"It is not in human nature that judges shall hold the scales evenly when they themselves will be the sacrifices. It will introduce the rule of cowardice in place of the rule of courage; the rule of time-serving in place of the rule of fearless justice; the rule of force of the great body of the people instead of the rule which protects the weak individual against all the people. And so, with the proposal that the people shall pass by vote upon the decisions of the judges as to constitutional questions; that means that wherever a constitutional litigation has been established to prevent the people from doing injustice, when it comes to the point of action, they themselves shall determine whether they will be restrained by it or not in the particular case where the injustice may be done. These rules must be kept impersonal, abstract, universal, in order that they may restrain and guide action in each particular case.

"It is so that just men rule their conduct. They do not make up their principles as they go along, according to the wish to do this or that or the other thing. They determine their principles and they direct their conduct and restrain their wishes by making them conform to the principles they have adopted beforehand.

"These fundamental bases of our government do together assert and set up as the great pivotal principle of national conduct the proposition



that there is such a thing as justice that is above majorities and is independent of popular will. All the voters in America cannot make injustice, justice. It is impossible that any two beings should be created anywhere in this universe, and come into life without being subject to the eternal law that requires just conduct by them toward each other. Abraham Lincoln, in the first inaugural, described the true character of our government. He said: 'A majority held in restraint by constitutional checks and limitations and always changing easily, with deliberate changes of popular opinion and sentiment, is the only true sovereign of a free people. Whoever rejects it does of necessity fly to anarchy or despotism'."

—*Remarks in the State Republican Convention, of New York, at Rochester, Apr. 10, 1912, on 'The Recall of Judges.'*

### THE UNITED STATES—HIS CLIENT

"The success Elihu Root achieved twenty years ago as a lawyer in handling difficult problems of big business is remembered. At the age when most men of the first caliber have either made or unmade a public career through previous service in politics he obtained the government of the United States, as it were, for his client.

"Then great constructive accomplishments began to appear. He reorganized the United States army; created the general staff; devised and drafted the Platt amendment for Cuba; wrote every word of the organic law of the Philippines; inaugurated a foreign policy toward Latin America, a thing which had not existed since the days of Blaine.

"Mr. Roosevelt's appraisal of these things, which in the heat of a partisan campaign he did not amend, was: 'The greatest man that has arisen on either side of the Atlantic in my lifetime.'

"When Mr. Root came over to London a year ago last July from the Hague, I spent part of an afternoon with him. It was in his suite at Claridge's; Henry White was there. Mr. Root was fresh from the Hague, where he had been sitting for a month in conference. He remarked how hard it was in international conference to get the papers out where one can work at them.

" 'The difficulty is not with principles,' he said, 'but with understanding each other through the barriers to communication which different ways of thinking and feeling present. It is another country, another language, another literature, another custom, and sometimes a great many that you have to deal with. One learns quickly there that respect for the feelings and prejudices of others is the condition for having one's own feelings and prejudices respected. That is the problem of diplomacy.'

"We had known in London of Mr. Root's conference with Lord Phillimore when he first arrived in England on his way to the Hague. Mr. Root believes in having a plan, not a too comprehensive plan, but a working plan. He points to one cause of the failure at Paris as the lack of a plan. When we walked down the gangplank at Plymouth he carried in his pocket a scheme for the permanent court of justice. He conferred with Lord Phillimore. The merit of the Root plan which was adopted was its avoidances of the pitfall of the Hague tribunal for arbitration in the manner of selecting judges. The testimony of its merit is the now complete panel of judges for the international court of justice selected by the assembly of the League of Nations.

"Mr. Root enjoys a position in England not unlike that of Bryce in America. He declined the proffered headship of the international court of justice. He is spoken of throughout Europe in the equivalent of the phrase of Roosevelt: 'The greatest man on either side of the Atlantic.' Lord Bryce said to me: 'Your greatest Secretary of State since Webster, the greatest brain you have.'"—*Andrew Ten Eyck, in the Outlook.*



## PRESENTATION SPEECH

Mr. Root, in making the presentation of the statue on behalf of the American people, delivered a finely phrased oration. In the course of it he said:

"Put aside superficial differences, accidental and unimportant, and Abraham Lincoln appears in the simple greatness of his life, his character and his service to mankind, a representative of the deep and underlying qualities of his race—the qualities that great emergencies reveal unchangingly the same in every continent, the qualities to which the British owed her life in the terrible years of the last decade, the qualities that have made both Britain and America great. He was imbued with conceptions of justice and liberty that the people of Britain had been working out in struggle and sacrifice since before the Magna Charta—the conceptions for which Chatham and Burke and Franklin and Washington stood together a century and a half ago, when the Battle for British liberty was fought and won for Britain as well as for America on the other side of the Atlantic. These conceptions of justice and liberty have been the formative power that has brought all America, from the Atlantic to the Pacific, to order its life according to the course of the common law, to assert its popular sovereignty through representative government, Britain's great gift to the political science of the world, and to establish the relation of individual citizenship to the state on the basis of inalienable rights which governments are established to secure.

"It is the identity of these fundamental conceptions in both countries which makes it impossible that in any great world emergency Britain and America can be on opposing sides. These conceptions are the breath of life for both. While they prevail both nations will endure; if they perish, both nations will die. These were Lincoln's inheritance, and when he declared that African slavery was eternally wrong and gave his life to end it, he was responding to impulses born in him from a long line of humble folk, as well in England as in America, who were themselves a product of the age-long struggle for the development of Anglo-Saxon freedom."

—Root, in *Presentation Speech of Lincoln's Statue in Bronze, in England.*

## LANCASHIRE'S SUPPORT

"The true heart of Britain understood him while he lived. We remember the Lancashire workmen brought into poverty and suffering through lack of cotton. When the Emancipation Proclamation had dispelled all doubt as to the real nature of the struggle in America 6,000 of them met in a great hall in Manchester and sent to President Lincoln a message of sympathy and support. This was his answer:

"Under these circumstances I cannot but regard your decisive utterances upon the question as an instance of sublime Christian heroism which has not been surpassed in any age or in any country. It is an energetic and reinspiring assurance of the inherent power of truth and the ultimate and universal triumph of justice, humanity, and freedom.

"I do not doubt that the sentiments you have expressed will be sustained by your great nation, and, on the other hand, I have no hesitation in assuring you that they will excite admiration, esteem, and the reciprocal feelings of friendship among the American people. I hail this most interchange of sentiment therefore, as an augury that whatever else may happen, whatever misfortune may befall your country or my own, the peace and friendship which now exists between the two nations will be, as it shall be my desire to make them, perpetual."

"We may disregard all the little prejudices and quarrels that result from casual friction and pinpricks and from outside misrepresentations and detractions, and rest upon Lincoln's unerring judgment of his country-



men and his race. We may be assured from that whenever trials come, whenever there is need for assurance of the inherent power of truth and the triumph of justice, humanity and freedom, then peace and friendship between Britain and America will prove to be, as Lincoln desired to make them, perpetual.

"Because under the direct tests of national character, in the stress of supreme effort and sacrifice, in the valley of the shadow of death, the souls of both Britain and America prove themselves kin to the soul of Abraham Lincoln, friendship between us is safe, and the statue of Lincoln, the American, stands as of right before the old Abbey, where sleep the great of Britain's history."—*Idem*.

### THE PRIME MINISTER

The Prime Minister, in responding on behalf of the British people, said:

"In a few moments we shall see unveiled before our eyes a presentment in bronze of the best-known historical face in the Anglo-Saxon world, in fact one of the few best-known faces in the whole world. On behalf of the people of this country, and I think I may say on behalf of the people of the British Empire, I accept with gratitude this fine statue by a brilliant American sculpture of a great leader of men.

"I doubt whether any statesman who ever lived sank so deeply into the hearts of the people of many lands as Abraham Lincoln did. I am not sure that you in America realize the extent to which he is also our possession and our pride. He was in many respects the most remarkable man of the day. If you look at his portraits they always give you an indelible impression of his great height, as does his life, height of purpose height of idealism, height of character, height of intelligence.

"Among many notable men who filled the state at that day he was the tallest of them all. His figure stands out now, towering amongst the tallest contemporaries. In many respects he was taller even than the great event in which he took a direct part.

"The preservation of the American Union, the emancipation of the slaves, are notable events in the world's history. But reading the story, I feel that the personality of Abraham Lincoln and his statesmanship are in some respects even greater than those colossal events. His courage, fortitude, patience, humanity, clemency, his trust in the people, his belief in democracy, and may I add, some of the phrases in which he gave expression to those attributes will stand forever as beacons to guide troubled nations and their perplexed leaders."—*By Lord Lloyd George*.

### WAR AND VICTORY

"Resolute in war, he was moderate in victory. Misrepresented, misunderstood, underestimated, he was patient to the last. I know why his face appeared to become sadder as the years of the war rolled past. There were those who thought he ought to have displayed his appreciation of victory by using it hard-heartedly.

"He disdained both these counsels, and he was often reviled by both counsellors. His tenderness was counted as weakness of character, his implicity as proof of shallowness of mind, but the people believed in him all the time, they believed in him to the end, and they still believed in him. In his life he was a great American. He is American no longer. He is one of those giant figures, of whom there are very few in history, who lose their nationality in death. (Applause.)

"They are no longer Greek, or Hebrew, or English, or American, they belong to mankind. These eminent men whose statues are in that square are great Englishmen. I wonder whether I will be forgiven for saying that George Washington was a great American, but Abraham Lincoln belongs to the common people of every land. He is of their race, of



their kind, of their blood, of their nation, the race of the great common people. They love that haggard face with the sad and tender eyes. There is a worship in their regard. There is a faith and a hope in that worship. (Hear, Hear.)

“May I respectfully, earnestly, say one word from this platform to the great people of America? This torn and bleeding earth is calling today for the help of the America of Abraham Lincoln.” (Cheers.)

—*Viscount James Bryce.*

### LINCOLN'S BRITISH ANCESTRY

Lord Bryce, after speaking of Lincoln's British ancestry, went on:

“Thus, thinking of him as belonging to both branches of the old stock, we wish to commemorate him here among the great ones of Britain. No spot in Britain is so fit. In and around Parliament Square stand the sculptured figures of many of the most illustrious Englishmen; some under the open vault of heaven; some in the venerable Abby, rich with solemn and pathetic memories; some in the halls of Parliament itself, illustrious figures from the days of Hampden and Cromwell down to those of Canning and Peel, Disraeli and Gladstone.

“Placing the statue of Lincoln here in such company we honor him for what he did and for the meaning his life has had for his own country, for our common English stock and for the world. He brought his nation through the greatest perils it ever encountered, leaving a record of patient wisdom and a stainless life. To us he stands as a model of that uprightness and loyalty and truth, that steadfastness and courage which men of British stock have so often displayed in war and peace.

“He is ours, Mr. Root, almost as much as he is yours, a pledge of brotherhood and friendship, and we commemorate also as a hero who belongs to the whole world, because he showed what fame may be won and what service he rendered by a plain son of the people unaided by any gifts of fortune.

“His life and his character rise like a beacon light of hope to us all in these dark days of strife and confusion. Here in the midst of our great Englishmen let this great American stand majestic in his simplicity, a witness to what one indomitable will bent on high aims, always hopeful because inspired by faith in freedom and in the people whence he sprang, could achieve for all mankind.—*James Bryce.*



## SIR CHARLES RUSSELL, LORD KILLOWEN (1833-1900)

### AS A CROSS-EXAMINER

It has been said that Russell's success in cross-examination, like his success in everything else, was due to his force of character. His very appearance must have been a shock to the witness, the manly defiant bearing, the noble brow, the haughty look, the remorseless mouth, those deep-set eyes, widely opened, and that searching glance, which pierced the very soul. "Russell," said a member of the Northern Circuit, "produced the same effect on a witness that a cobra produces on a rabbit." In a certain case he appeared on the wrong side. Thirty-two witnesses were called, thirty-one on the wrong side, and one on the right side. Not one of the thirty-one was broken down in cross-examination; but the one on the right side was utterly annihilated.

### LORD COLERIDGE'S TESTIMONY

"To what do you attribute Russell's great success?" a friend asked of Coleridge; "he does not seem to me to possess more remarkable qualities than other eminent men, to be a better speaker, to have more intellectual power; how does he do it?" "He imposes himself upon the jury and the Court," was his answer; and his Lordship added, "He is the biggest advocate of the century." "Ordinarily," says an observer, "the judge dominates the jury, the counsel, the public, he is the central figure of the piece. But when Russell is there, the judge isn't in it, Russell dominates everyone."

### MADE HOMELY CLIENT LEAVE COURT-ROOM

One day in Court, the lay client, in a case turned round and made some suggestions to Russell. "Who is that unpleasant looking man who spoke to me," said Russell, with a frown to the solicitor, who happened to be sitting beside the client. "That's your client," said the solicitor. "Then, I must trouble you," said Russell, "to ask him to go to some part of the court-room where I cannot see him." The solicitor conveyed this request in diplomatic language to the client. The client, however, did not quite see why he should change his place, and said no. "Tell him," said Russell, addressing the solicitor, "that if he does not go, at once, where I cannot see him, I won't go on with the case." The client immediately disappeared.

### SOME OTHER ECCENTRICITIES

A pompous "expert," who had been in the habit of laying down the law before Parliamentary Committees, once attended a consultation at Russell's chambers. "Gentlemen," said he, while Russell was engaged in conversation with the other counsel, "if you will allow me, I shall give you my view of this case." "Hold your tongue," said Russell, "till you are asked for your view!" He did not like anyone to put a hat on his table, or to touch him. One day a self-important solicitor came in. "How do you do, Mr. Russell, how do you do?" he said, walking forward and putting his hat on the table. "Take your hat off the table," was Russell's sole reply. The solicitor was offended, and took a back seat, when the consultation began. During the consultation the solicitor got excited, and jumping up, touched Russell, saying, "I think you are mistaken, Mr. Russell." Said Russell, "Take your hand away."



## BLUNT—TOLD A MAN HE WAS A FOOL

A man who had a grievance, the result, in no small degree, of his own folly, plagued Russell with his story, as they walked together from Charing Cross to Oxford Circus. "Now, Russell," said the man, when they got to the Circus, "I have told you my whole story, and I would like to know what you think." "I think you are a great fool," said Russell, as he turned off to Harley Street.—*James of Herford's Life of Russell*, 92-3.

## HIS BROGUE

"Russell," a friend said to him, "if you could only give up your Irish brogue, it would be worth to you at least 500 pounds (\$2,500) a year." "I would not give it up," said Russell, for an additional 500 pounds."

—*Idem*, 89.

## THE PARNELL CASE

The Parnell case was Russell's great case. He closed in an eight-day argument before the Commission. There were examined before the Commission 340 witnesses. Russell made Ireland his client, and England its oppressor, and treated the *Times*, the real party in interest, a synonym for English oppression. In this case Russell completely broke down the forger Pigot, drove him to Madrid, Spain, where he suicided, rather than return to England. Of Russell's great speech, Sir James Hannen, one of the judges of the Commission, wrote, "A great speech, worthy of a great occasion;" Lord Rosebury, "You have at a bound passed from solid reputation to supreme eminence;" and Cardinal Manning, "You lifted the subject to the level of a great national and historical cause." Russell's fee in this case was \$16,500. "It was the greatest speech, since Burke's day," said George S. Boutwell, of Boston, Mass., in 1902, to the compiler of this work.

## NOT A STUDENT

Russell was not a great student in general literature. He was too much a man of action to be a man of books. But wherever he went he carried two books in his hand-bag, "Locke on the Human Understanding," and "The Imitation of Christ." He loved novels of excitement; "Monte Christo," was a favorite. He read Gaborian's books, dipped into Tolstoi, and Tourgeneff, and once when he was ill at Leeds, he got his chief clerk, Mr. Block, to read the "Adventures of Sherlock Holmes" to him.—*The Author*.

## CHESS, CARDS, AND HORSE-RACING

He played chess, was fond of music and pictures, and delighted to steer a boat in a gale of wind. Horse-racing and boxing were his delight.

—*Author*.

## THREW TRAVELER'S BOOTS FROM CAR

He was once traveling from Newmarket to London, a powerful looking man, clearly a betting man, got into the same carriage. As the train moved away from the station, the man opened a bag, and took out a pair of slippers. He then proceeded to take off his boots. "What are you going to do?" said Russell. "To take off my boots," said the man, "and to put on these slippers." "I object strongly to your doing anything of the kind," said Russell; "its a most offensive proceeding." "I suppose I can do what I like with my own boots?" said the man. "Not in a public conveyance," replied Russell. "Well, I am going to take off my boots,"



said the man, "and to put on these slippers. "And if you take them off," said Russell, "I'll fling them through the window." The man laughed and took off his boots; but they were through the window before he had time to get into his slippers. He was furious, but he had to grin and bear it, telling Russell he would "take the law on him." After an hour's run the train stopped, the man got out to have refreshments, and when Russell saw him walking on the platform in his slippers he was suddenly stricken with compassion. "Sir," said the man, "you cannot do more than apologize. We shall forget the incident;" and then they chatted away, as if nothing "untoward" had happened until the train reached London.

—*Russell's Life*, 338-9.

### KEPT SIX LAWYERS BUSY BRIEFING CASES

One day, on circuit, a barrister went into the library and saw a man working up some cases. "What are you doing?" he asked. "Working up cases for Russell," was the answer. He went round the library, and found that there were not less than six men "working up cases for Russell." "Why," said he, "the whole library seems to be working for Russell," "Yes," said the sixth man, "there are six of us doing the work of one man, in order that one man may do the work of six."—*Russell's Life*, 91.

### ACCURATE

It was an intellectual treat to work with Russell. To have one's mind drawn through his was bracing and healthful. "To work with you," I once said to him, "is as good (or as bad) as to go through a course of Austin's Jurisprudence." "I like to be exact," was the rejoinder. "So-and-so," he would say, "was always in the air." Inaccuracy and being "in the air" were the things which Russell hated most. The things he loved best were accuracy, lucidity, brevity, and keeping to the point. So long as you kept these four things in mind, you might agree or disagree with him, you might be conciliatory or aggressive, but he listened to you with attention, and treated your arguments and views with respect. He was only intolerant of stupidity, folly, verbosity, and affectation. Upon one occasion he asked a pretentious coxcomb, "Have you ever read 'The Newcomes'?" "Yes," drawled the coxcomb. "Well," said Russell, "you are like Barnes Newcome."—*Life of Russell*, 92.

### COMPARED WITH HIS RIVALS

"Either as a junior or a contemporary, I have been associated with Cockburn, Thesiger, Kelly, Melish, Coleridge, Karslake, Giffard (Lord Halsbury), Hawkins, Holker, and of course many others. I cannot say that Russell was the equal to all these in every particular quality. Cockburn's eloquence has been unrivaled by any advocate of our time; Kelly was a most subtle reasoner; Melish was a most consummate lawyer; and Lord Brampton (Hawkins) possessed the highest powers of acute cross-examination. But I doubt if any of these men possessed such a combination of the principal qualities which avail an advocate as was given to Charles Russell, for in respect to none was he deficient."

—*James of Hereford*, in *O'Brien's Life of Russell*, 272.

### STANDING AS A LAWYER

Russell became *par excellence* the leader of the Circuit. Next to Holker, Russell himself regarded Herschell and Pope as the ablest men on Circuit. Russell once said to me: "My chief contemporaries on the Circuit were Pope, Herschell, and Holker. Holker was a formidable opponent, so was Herschell; Pope was a very able man, but not a lawyer in the same



sense as Herschell and myself. I do not think Pope was suited for *nisi prius* business. He was better suited to Parliamentary business. He was certainly suited for politics, he would have been a greater success in the House of Commons than either Herschell or myself; had Herschell and I been different men, the work in the Northern Circuit would not have gone so smoothly or so quickly as it did. We were both quick; we lose no time in coming to the point, and we keep to it. We understood and trusted each other."—*Author*.

## TWO GREAT CASES OF RUSSELL'S

He seems to have thought his greatest triumphs were *Wilberforce v. Philip*, and *Chamberlayne v. Barnwall*.—*O'Brien's Life of Russell*, 372.

## HIS AMBITION

Sir Charles had an ambition, he wanted to sit on the woolsack; to have the mace and purse carried before him; to be the keeper of the Queen's conscience; to be the head of the legal profession, and to be the first Roman Catholic lord chancellor of England and Ireland since the days of the Stuarts. This would be immortality in history. Lord Rosebury was willing; but there was difficulty. Lord Herschell was already on the woolsack and intended to stay there. There was no precedent for two lord chancellors. Would Sir Charles wait till after the next general election and take his chance? The Lord chief justiceship was vacant. Sir Charles looked toward the woolsack and sighed, and then he sat down in the vacant chair. History may tell more, but that is how Sir Charles Russell became Lord Chief Justice of England, with a seat in the House of Lords, as Baron Russell of Killowen.—*Author*.

## HIS NATIVE WIT

In his early days, he had a good deal to contend with from older men and judges, who thought to prune him down and squelch his exuberance, and he might have been snuffed out as many men have been but for the splendid combative element with which he was endowed. If he could help it, he would not be sat on, and was often very irritable when interrupted. His native wit made him formidable. One day Sir Digby Seymour, Q. C., kept up a flow of small talk when Russell was speaking.

"I wish you would be quiet, Saymore," said Russell, with his Irish accent.

"My name is Seymour, if you please," replied the learned gentleman, with mock dignity.

"Then I wish you would 'see more' and say less," was the rejoinder.

—*Author*.

## VERY DEMOCRATIC

During the Parnell Commission, when he was examining hostile witnesses whom the inapt British attorney-general, Sir Richard Webster, had flustered and puzzled and worried out of their wits, he would rise, adjust his pince-nez, eye the witness carefully over the pinch of snuff he was taking, flick his dark handkerchief toward the box, and say suddenly, "Now thin, Mickey, what is this all about?"

There was always the delicate suggestion of brogue in his talk with these witnesses; just a sufficient aroma of it to inspire confidence in them, restore what seemed to them their self-possession and lure them softly into a veritable bog of admissions and revelations. But this simulated brogue was not related at all to the rancous, squawking, harsh disfigurement of English which Lord Russell heard as a boy in his native County Down. It was the mellow, gentle intonation of the West and South,



because he was dealing with Western and Southern peasants. It was the intuition of a great actor which put it on his tongue. But he would not have been the great actor that he was, if he had not been an Irishman.

### AN AUTOCRAT ON THE BENCH

On the bench he was an autocrat of a highly individual type, at once robust and vigilant. There are growing up legends of volcanic masterfulness around his chieftainship. It was noted, for instance, that in the Jameson trial, Lord Russell's two colleagues watched and obeyed him like terrified performing dogs. One of them was Sir Henry Hawkins, for years a veritable bogy man among "hanging judges," and fondly believed to be the most effective judicial bully of his generation; but here he showed a wholly lamblike spirit under the grim eye of this redoubtable new "chief." But off the bench and in every non-professional capacity Lord Russell was quite the reverse of self-assertive. He spoke, both in set discourse and in the lighter after-dinner extempore, so that all were glad to hear him; but he was the last to multiply opportunities for the sound of his voice, and he listened to others without producing the impression of resentment that he himself was being prevented from talking.

—*Author.*

### MAN OF THE WORLD

In the nicer sense of the phrase, he was many-fold more "a man of the world" than was Coleridge. He liked to ride a horse, and, perhaps, even more to see a horse race. He was a profound student of whist, and was grounded in the rudiments of some other games. He delighted in good company, and in the absence of nonsense and canting formalities. Within the scope of his profession, in matters concerning the dignity of his trade, so to speak, he had the arbitrary and despotic temper of a master craftsman. Good workmanship he revered and he was intolerant with those who did not. His contempt for hereditary distinctions was not skin deep; it ran through his veins. He insisted upon having his peerage limited to himself, for his own life, as a tangible protest against an institution that he honestly hated. In a thousand other ways he was a democrat of the simplest and truest kind, and in many of these ways no man of unmixed English blood could ever quite follow him.—*Author.*

### GAVE TOO FREELY OF HIS MONEY

He was one of the most engaging and lovable personalities in England's public life. His generosity to his friends, indeed, to anybody whom he became aware was in difficulties, swallowed \$100,000 a year, while he was a practicing barrister, and involved him in debts that threatened to destroy his peace of mind and injure his professional future. "What you want to do," said one of his friends, "is to syndicate yourself and let a managing director conduct your practice, and finance your money-making possibilities." This was actually done. A committee of friends paid off his debts, received all his income—during the last year of his practice he made \$112,000—gave him a large allowance and brought system into his accounts, until he was free from debts, and had substantial investments.—*From a London paper, at time of his death.*

### LAND TENURE BILL

"It is stated, and I believe with perfect truth, that when Mr. Gladstone was preparing a Land Tenure Bill for Ireland, a draft of the first scheme was sent to Sir Charles Russell, with a request that he would furnish the Cabinet with suggestions for its improvement. Russell read the draft bill carefully through, and found it utterly weak and in-



adequate for its purpose. He returned it with the brief observation that the only improvement he could suggest was to put the draft into the fire. The Bill took a stronger form, after this suggestion, and opened a new era in land legislation for Ireland."

—2 *Justin McCarthy's Reminiscences*, 203.

## WIDE KNOWLEDGE NECESSARY IN THE LAW

"There is no such a thing as knowledge which is useless in the profession of the law. A man may not be a better engineer because he is a good classic, or a more successful merchant because he is a good mathematician; but at the bar, the wider the field of knowledge the better. There is there no such thing as knowledge going to waste. Indeed, I undertake to say that it rarely or never happens that a barrister does not find useful to his hand information which he has stored up, even upon subjects wholly remote from a knowledge of the law itself."

—*Russell on 'The Bar as a Profession'—in Youth's Companion*, Feb., 1896.

## "SAYING NOTHING WITH EASE AND GRACE"

"The world is full of men who have nothing to say, and say it with ease and grace, and even with what sometimes passes for eloquence, but I have never known any man who had something to say, which was worth saying who, whatever his difficulties of utterance or natural poverty of language may have been, has not been able to say that something forcibly and well. After all, the desirable thing is to have something to say."

—*From 'The Bar as a Profession,'—Youth's Companion*, Feb., 1896.

## DANIEL WEBSTER

"Daniel Webster's arguments were granite-like, and he was, perhaps, the greatest figure the world has seen."—*Idem*.

## REQUISITES TO SUCCESS AT THE BAR

"Love of the profession for its own sake, physical health to endure its trials, clear-headed common sense and ability to wait, are the main considerations to be taken into consideration in determining the choice of the bar as a profession. If the youthful aspirant possesses these, success is, humanely speaking, certain. In fact, I concentrated my attention on the Bar; I did not allow myself to be distracted. It is the only way you can succeed at the Bar; or at anything."

## DESPONDENCY—GULLY, HERSCHELL AND RUSSELL

"I will give you a curious instance of the feeling of despair which sometimes comes over men, and able men, too," said Russell. "During my first years at the Bar, Gully, Herschell and I dined together on Circuit one night. Gully and Herschell were in a very despondent mood. They almost despaired of success in England. Gully—I think it was Gully—proposed going to the Straits Settlement and Herschell to the Indian Bar. It is curious to think of that night now, and to remember what those men ultimately became—Herschell, Lord Chancellor, and Gully, Speaker of the House of Commons. Besides the Bar, I made some money at the Press." And we might add Russell's practice got above \$100,000 a year, and then he became Lord Chief Justice of England.

—*Life of Russell*, 76.



## PUBLIC OPINION

"Public opinion is a force which makes itself felt in every corner of the world, and is most powerful in the communities most civilized."

## INTERNATIONAL ARBITRATION

(Speaking of Civilization Chief Justice Russell, in his address before the American Bar Association, in 1897, said):

"Its true signs are thought for the poor and suffering; chivalrous regard and respect for woman; frank recognition of human brotherhood—irrespective of race, or color, or nation or religion; the narrowing of the domain of mere force as a governing factor in the world; the love of ordered freedom; abhorrence of what is mean and cruel and vile; ceaseless devotion to the claims of justice. Civilization in that, its true, its highest sense, must make for peace. We have solid grounds for faith in the future. Government is becoming, more and more, but in no narrow class sense, government of the people, by the people, and for the people. Populations are no longer moved and maneuvered at the arbitrary will or restless ambition or caprice of kings or potentates may dictate. And, although, democracy is subject to violent gusts of passion and prejudice, they are gusts only. The abiding sentiment of the masses is for peace—for peace to live industrious lives, and to be at rest with all mankind. With the prophet of old, they feel—though the feeling may find no articulate utterance—'how beautiful upon the mountains are the feet of him that bringeth good tidings, that publisheth peace'."

## HERSCHELL—A FORMIDABLE ANTAGONIST

Russell was asked, in 1885, whom he regarded as his most formidable antagonist at the Bar, and he answered, "Herschell."—*Russell's Life*, 89.

## "TWO MOTHERS-IN-LAW"

While a barrister, Russell was asked, "What's the extreme penalty for bigamy?" "Two mothers-in-law", said he.

## WEAPON FOR LEGAL BATTLE—THE SWORD AND NOT THE DAGGER

"The lawyer must remember that in the battle, his weapon must always be the sword of the soldier, and never the dagger of the assassin."

—*The Bar as a Profession—Youth's Companion*, Feb., 1896.

## INTERNATIONAL LAW—WHAT IT IS

"International law is neither more nor less than what civilized nations have agreed shall be binding on one another as international law."

—*In Bering Sea Arbitration*.

## ORATORY—DID NOT AROUSE RUSSELL, EXCEPT ON GREAT OCCASIONS

"Russell was never quite at home in the higher ways of oratory. He needed the pressure of a great issue to exhibit his powers of eloquence at their best, and even in the House of Commons I fancy he never quite justified his unrivalled position at the bar. But in that special gift of



eloquence that makes for power in advocacy there was surely no man of his time who could claim to be his equal. Within the arena of the Court, his personality imposed itself; in the stress of the conflict it would even be menacing. It exercised its influence upon the jury; it was not unfelt upon the Bench. Like all great advocates, he was at his best when the gravity of the issue summoned all his resources. He was only fully inspired when his individuality was fully and deeply engaged, and for that he needed the spur of something definite, concrete, and individual. His gifts of oratory were conspicuous. In those Northern Circuit days I used constantly to notice greater freedom of picturesqueness of gesture, a more complete surrender to a mood of passionate utterance than any of his fellows could command. These things were his in virtue of his birth-right as an Irishman. But they were not at his service upon an issue that was coldly intellectual or remotely abstract. There was in his nature that purely combative element that could only find its full expression in the battle of litigation; the clash of ideas left them comparatively cold; he was so far an artist that he needed to be moved and stirred by facts that were moulded into a definite story of individual fortunes—then and only then, the full force of his personality came into play. At such moments his strength far outmeasured the weight of gifts that were merely intellectual; such gifts, however considerable, were then enforced by qualities of character, and even of temper, very difficult to define but still more difficult to resist."

—*J. Comyns Carr's 'Some Eminent Victorians,' 52.*

## RUSSELL AND COLERIDGE

"It has often been a subject of discussion among lawyers whether Charles Russell or John Duke Coleridge was the greater advocate. I am not sure that Russell was quite at his best in the *Baccarat Case*, but so far as that case was concerned, I think no careful student of the trial would deny the supremacy to Coleridge—for the very fine specimen of judicial advocacy which he delivered the next morning in his charge, as he was the Judge before whom the case was tried. The charge was ample proof of his superiority to Russell in the art of advocacy."

—*Sir Edward Clarke—in his 'The Story of My Life,' 297.*

## CLARKE'S ESTIMATE OF RUSSELL AS AN ADVOCATE

"At the bar Charles Russell had been one of the most powerful advocates of his time. His industry and energy and shrewd and rapid judgment made him always a very formidable opponent. And they were greatly helped by his personal advantages. A commanding presence, a full, clear, resonant voice, a flashing eye and imperious gesture, often bore down opposition, and unnerved the witness he was cross-examining, or a young counsel who was appearing against him, sometimes, even the judge. When he had a very strong case and felt certain of winning, he was superb. But, if difficulties unexpectedly arose, he became impatient and irritable, and would often compel a reluctant client to an unsatisfactory compromise. When he became a judge, the faults of manner and temper, which had prevented his being very popular at the bar, gradually disappeared. His death at the age of sixty-eight was a national calamity; for he was a judge of the highest class, just, painstaking, and courteous, sound in learning, and resolute that right should be done. I have no doubt that if he had been spared for ten years longer he would have ranked among the greatest of English judges."—This was said of him in 1896, during the trial of the *Dr. Jameson Case*, in which Sir Edward Clarke appeared for the prisoner, who was convicted.

—*Clarke's 'The Story of My Life,' 328.*



## ENGLISH AND IRISH JURIES DIFFER

"Juries differ widely. Sir Charles Russell used to say, for instance, that there was all the difference in the world between English and Irish juries. Irish juries enjoyed the fun and the drama of a trial; they entered into it all, and appreciated the cut-and-thrust; whereas English juries were concerned more with wondering how soon they would be released."—*Manchester Guardian*.

## DESCRIPTION OF RUSSELL

"Russell rapidly became, in London, what he was always in Lancashire, the favorite leader in *nisi prius* actions. The list of *causes celebres* in the period 1880-1894, is really a record of Russell's cases, and, for a greater part, Russell's victories. The best known exceptions, from the latter category, was the libel action, *Belt v. Lawes*, in 1882, which after a trial before Baron Huddleston and a special jury, lasting more than forty days, resulted in a verdict for the plaintiff, for whom Hardinge Gifford (afterwards Lord Chancellor Halsbury) appeared as leading counsel.

"The triumph of his client in the Colin Campbell divorce suit, in 1886, afforded, perhaps, the most brilliant instance of Russell's forensic capacity, in private litigation.

"As a Judge he was dignified, without pompousness, quick without being irritable, and masterful without tyranny. A well-built frame; a strong, striking face, with a broad forehead, keen gray eyes, and a full sensitive mouth; a voice which, though not musical, was rich, and responded well to strong emotions, whether of indignation, or scorn, or pity; an amazing power of concentrating thought; and intellectual grasp, promptly seizing the real points of the most entangled case, and rejecting all that was secondary, or petty, or irrelevant; a faculty of lucid and forcible expression, which without literary ornateness or grace of style could on fit occasions, rise to impassioned eloquence,—all these things, Russell had. But beyond and above all these was his immense personality, and embodiment of energetic will which rivetted attention, dominated his audience, and bore down opposition. \* \* \* He was not a learned lawyer, in the sense in which Willes, or Mellish, or Blackburn were learned lawyers, he did not possess the fine legal acumen of his great contemporary, Herschell; but he had a sufficient apprehension of legal principles. \* \* \*

"After he took sick, in 1872, he divided the best leading work of the circuit with Holker, Herschell and Pope."

—*Sir Charles Russell, 11 edition Ency. Brit.*

(Russell was born Nov. 10, 1832, at Bellybot, County of Down, Ireland; educated at Harkins' school at Newry, and St. Vincent's College, Castleknock, Dublin; died in London, Aug. 10, 1900. After reading law in Belfast, finishing in 1854, he practiced in Belfast four years, where he studied for the bar at Trinity College, Dublin, and was admitted in London, 1858; that year married Ellen Mulholland, in Belfast; his mother gave him on his wedding, 1,000 pounds, and Russell struck out as a barrister in London, Jan., 1859. At first made his way by writing a pamphlet on the rights of Irishmen before the law, and corresponding for a Dublin paper and a London Catholic newspaper. He made the first year 120 pounds, and doubled his income every four years. The first year of his practice, 1859, his income was \$885; 1860, \$1305; 1861, \$2,205; 1862, \$5,080; 1863, \$5445; 1864, \$8,695; 1865, \$10,855; 1866, \$11,835; 1867, \$15,540; 1868, \$15,135; 1869, \$16,790; 1870, \$21,150; 1871, \$15,000; 1872, \$20,000; 1873, \$27,000; 1874, \$54,000; 1878, \$55,510; 1881, \$73,330; 1892, \$90,665; 1893, \$112,585; in 1886, became attorney-general, and again in 1892-4, when he was made Chief Justice. He had



been 35 years in practice, had worn "silk" 22 years. As a lawyer there was no man more widely known in England; and in the law courts was the first of his time. His was not a subtle mind, nor was it stored with great learning. He was more than a great orator, he was a great personality. Bowen has described him as an "elemental force." He was one of those men whose coming in and going out of a room made a difference).

### DUTY OF JURY

"You are the appointed judges and arbiters in the case. The responsibility will be yours alone, and will be the responsibility of each one among you; for the law in its wisdom has fixed your number so large that the heated—it might be intemperate, or hasty—judgment of one or two shall not destroy and outweigh the patient, determined, and anxious judgment of the rest. So select is your number at the same time as to preserve to each one of you a sense of individual responsibility; for the verdict which you give shall be by the law the verdict of each one of you. This man, standing as he does, friendless and alone, stands almost within the shadow of the scaffold. Can you—will you—ought you—for this is the important point—save him? You ought not, I say, though I am his advocate, if after careful, anxious, and thorough examination and consideration of the facts of this case you come to the conclusion that the finger of duty points sternly, conclusively, irresistibly to a verdict of guilty. But if, after that anxious consideration, a doubt remains—if you feel that there are parts of that evidence, and vital parts, upon which you cannot stand, for they seem to crumble away beneath your feet—then it will be your duty to say, whatever suspicions you have, that the prisoner is entitled to the benefit of the doubt which remains present in your minds, after anxious, solemn—I would almost say in so serious a matter, your prayerful—consideration of the facts of the case. The law gives him the benefit of the doubt, and justice requires that he should have it. I make no appeal to you for mercy. Yours is not the prerogative of mercy; but you are administering a law which is itself merciful; which esteems it to be a less grievous thing that the guilty should at times escape than that the innocent should perchance suffer. In the spirit of that law, with all the earnestness of which I am capable, I appeal to you on behalf of the prisoner."

—*Sir Charles Russell in Defense of Patrick O'Donnell.*

Sir Charles Russell (Lord Killowen), was born in Newry, Ireland, 1832 and died in 1900. He was called to the bar at Lincoln's Inn in 1859, was appointed queen's counsel in 1872, served in Parliament as a liberal (1880-94), and was attorney-general in the Gladstone administrations of 1886 and 1892. As a cross-examiner he was almost without a rival at the English bar, and greatly enhanced his reputation as an advocate by the masterly speech he made before the Parnell Commission (1889), where he appeared with H. H. Asquith (later prime minister) as counsel for Parnell. He was one of the counsel for Britain in the Bering Sea Fisheries Arbitration (1893), presided at the trial of the Jameson raiders (1896), and was one of the arbitrators in the British Guiana and Venezuela Boundary Commission. In 1894 he was made a lord of appeal and raised to the peerage for life, and later in the same year succeeded Lord Coleridge as chief-justice. He was the first Roman Catholic to hold this office since the Reformation. In 1896 he made a powerful speech on international arbitration before the American Bar Association.

—*The Author.*



## JOHN RUTLEDGE (1739-1800), South Carolina

### ORIGIN AND END OF GOVERNMENT

"The consent of the people is the origin, and their happiness the end of government."—*From Speech to the S. C. Assembly, Apr. 11, 1776.*

### DR. RAMSEY'S TRIBUTE

"While Massachusetts boasts of her Adams; Connecticut of her Ellsworth; New York of her Jay; Pennsylvania of her Wilson; Delaware of her Bayard; Virginia of her Henry, South Carolina rests her claim on the talents and eloquence of John Rutledge."

—*Ramsey's History of the U. S.*

### WASHINGTON ON HIS ORATORY

"Washington said Rutledge was the greatest orator in the Continental Congress."—*Martha J. Lamb,—13 'Mag. of American History,' 331.*

### DIFFICULT CASES AND LARGE FEES

"He was employed in the most difficult causes, and retained with the largest fees given in his day. The client in whose service he engaged was surprised to be in a fair way of gaining his cause. His qualities as a lawyer and advocate were of a character to ensure success. He had a penetrating judgment and great quickness of perception, intuitively seizing upon the strong points of a case, presenting them to the court and jury with remarkable energy, eloquence and success."

—*L. B. Proctor,—'Lawyer and Client,' 312.*

### HIS PREPARATIONS FOR THE LAW

"After an excellent classical education, Rutledge entered as a law student in the Temple, in London, and proceeding as a barrister, came out to Charleston, and began the active practice in his profession in 1761. In his first cause—an action for breach of promise of marriage—his eloquence astonished all who heard him. His business became large, and he at once took rank among the able members of the bar. With Gadsden and Lynch he was sent to the Congress at New York in 1765, and his bold denunciation of the Stamp Act filled with wonder the members of distant provinces. He returned to the bar, and for ten years devoted himself exclusively to practice. In 1774 he became a member of the Continental Congress, and Patrick Henry called him the foremost orator of that body."—*Carson's History of the U. S. Supreme Court, 143-4.*

### CHIEF JUSTICE OF U. S.

President Washington, in 1795, nominated Rutledge Chief Justice of the United States, and he presided over the Supreme Court during August of that year; but in December of the same year the Senate failed to confirm the nomination—the real reason being that his mind had become seriously impaired. He died five years later.



## EDWARD G. RYAN (1810-1880), Wisconsin

### CONSERVATISM

"Pure conservatism is always wrong, civilization is never fixed. No Joshua has power to stay the course of the human mind. Change is the necessity of human history, progress the duty of the human race. Pure conservatism has no place in the annals of mankind. It concedes the past, but denies the future. It worships the actual, but anathematizes the possible. Its creed is the present because it is the present. It holds with Pope that whatever is, is right. It is the bigot of the present, without sympathy with the past, or prophecy of the future. Content where it finds itself, pure conservatism sits down by the wayside, while the march of civilization passes by and presses on the promised land of the future, guided by its dark way by faith in the destiny of man as by a pillar of fire."—*Edward G. Ryan, of Wisconsin.*

At the age of 64 was appointed a member of the Supreme Court of the State, which he held for 6 years. Was renowned as an advocate and an orator, and established a reputation as judge equally enduring, though his temper was uncertain and at times violent. He was born near Enfield, County of Meath, Ireland; educated seven years at Clongowes, Wood College, Ireland; came to America in 1830, admitted in 1836, after studying law and teaching in N. Y. City; and settled in Chicago; moved to Racine, Wis., in 1842, to Milwaukee in 1848. When appointed to the State Supreme Court, he said: "This is the summit of my ambition; it is the place to which I have looked, but it has been so long delayed that I have ceased to expect it."

### JUSTICE

"It is the habit in many of the States to place a statue of Justice upon their courthouses and capitol. It is well, Mr. President, that no such statue adorns the dome of this capitol, before the judgment in this cause shall have settled the standard of public justice in this State. If by your judgment this defendant is to be the model of judicial integrity, his conduct your standard of judicial purity, let the statue of Justice be ordered for your capitol. But be true to your standard. Follow no false precedents. It is the habit to represent Justice as a pure, young and beautiful maiden, chastely and modestly robed, with her eyes blindfolded, with her virgin hand holding out the pure scales of Justice, suspended and poised in the open light of day before the world. That has been the sculptor's dream of Justice, sanctioned by the nations of the earth. But with a new standard follow no old precedents. Ask your sculptor for no pure, blinded, virgin as your ideal of justice. Tell him to erect upon the dome of this capitol the marble image of a jaded, decayed, broken, unclean, diseased wanton, blinking from behind the distorted bandage put upon her eyes to dupe the scruples of mankind, and reaching forth the hand which has dropped the sword of Justice, to put the weight of avarice and lust and every unclean passion into the scales to bear down truth and right."

—*E. J. Ryan, from peroration in an argument.*

### CHRIST'S DIVINITY

"About the time that Cicero, the greatest man of the Roman Empire, gave the world the labored production of his great intellect there lived an unlettered young man in the province of Galilee, who before he was



33 years old, spoke the sermon from Mt. Olive. Eighteen hundred years have passed, and the inspiration of the Sermon on the Mount rules in every civilized land, while Cicero's orations find place only on a few musty shelves. If this is not divinity, then it certainly is a human miracle."—*Hon. Edward G. Ryan, of Wis.*

### PROFESSIONAL HONESTY

"Craft is the vice, not the spirit of the profession. Trick is professional prostitution. Falsehood is professional apostasy. The strength of a lawyer is in a thorough knowledge of legal truth, in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and wildest devices. The power of integrity is the rule; the power of fraud is the exception. Emulation and zeal lead lawyers astray; but the general law of the profession is duty, not success. In it is but the verdict of little minds. Professional duty, faithfully and well performed, is the lawyer's glory. This is equally true of the Bench and Bar."

AMERICAN BAR: "The American aristocracy of brain is substantially the American Bar."—*Edward G. Ryan of Wis.*

### A LAWYER'S DUTY

"This is the true ambition of a lawyer: To obey God in the service of society; to fulfill His law in the order of society; to promote His order in the subordination of society to its own law adopted under His authority; to minister His justice by the nearest approach to it under the municipal law which human intelligence and conscience can accomplish. To serve man by diligent study and true counsel of the municipal law; to fill the allotted part in protecting society and its members against wrong, in enforcing all rights and redressing all wrongs; and to answer before God and man according to the scope of his office and duty for the true and just administration of the municipal law. There go to this ambition, high integrity of character and life; inherent love of truth and right; intense sense of obedience, of subordination to law, because it is law; deep reverence of all authority, human and divine; generous sympathy with man, and profound dependence on God. These we can all command. There should go high intelligence. That we cannot command. But every reasonable degree of intelligence can conquer adequate knowledge for meritorious service in the profession."

—*Judge Ryan, as told by Winslow, 'The Story of a Great Court,' 316.*

### CONTEMPT OF COURT

In arguing a case before the Supreme Court, Ryan called the State attorney a vagabond, and was fined \$25 by the court. When the court adjourned, and before the judges could get out of their chairs, Judge Ryan arose, white with wrath, and shouted: "This court has fined me \$25 for giving my opinion of the State attorney. God only knows how much it would fine me, if I should give my opinion of the Court."

—*Consul Willshire Butterfield, 5 'Mag. Western History,' 840 (1886).*

### WOMAN'S PURITY

"He who lays his hands upon a woman, save in the way of kindness, is a brute. I say more; he who puts his hand upon a woman, even in kindness, save in that kindness which is authorized by the relations between them; he who lays his hands in the authorized instinct of sex upon a woman insults and wrongs her. I speak not here of bestial assaults



upon the sanctity of woman's person. I care not whether man's arm be thrown gently around the waist, or man's hand clasp the hand of woman; I care not what the imposition of hands may be, if it be the imposition of sex unauthorized by the relations of the parties, or the free consent of the woman first given, it is a brutal assault. It is the assault of lust upon the outworks of chastity. It is an attempt to debauch. God has made man strong and woman weak. The same God has made human society dependent on the chastity of woman, and on man's faith in it. Take chastity from woman, and family, kindred and home, things unknown as amongst the beasts of the wilderness. What protects society? What upholds the purity of woman, which is the life and being of woman upon this earth? Ruled by the laws of mere physical force, they walk upon the earth subjects of man's passion, as a man walking the wilderness of Africa is the subject of the untamed appetite of the wild beasts who roam there in the supremacy of brute force. But God has given to woman a chastity of being that men worship like an idol. God making woman weak in body, has made her strong in purity; and she walks this earth for all time, free and secure in her native modesty, unapproached, save in honor, unsullied even in thought. That is God's character to woman, that is her guard on earth. And the man, I care not who or what, unlicensed by any relation of legitimate affection, claiming no father's, no son's, no husband's, no recognized and accepted lover's rights; the man who in the effrontery of passion, or the disguised approaches of passion, but raises his hand towards her, aye, but looks his lust to her, is a brute who outrages not merely her, but outrages all the sanctities of human nature in her person."

—*From his speech in the impeachment of Judge Levi Hubbell, before the Wisconsin Assembly, commenting upon the Judge's indecent acts. 5 'Mag. West. Hist.,' 835-6.*

### ROBERT M. LAFOLLETTE'S TRIBUTE

"He was one of the most remarkable men who ever served at the Wisconsin bar. It was he who had written the epoch-making decision sustaining the Potter Law, which in no small measure laid the foundation for judicial action in this country upon the control of corporations. An Irishman by birth, with a fine legal education. Of an erratic, impulsive and passionate temperament, in his decisions he was as cold and judicial as any judge who ever sat on the bench. I remember his bowed figure, his fine, almost feminine features, his wavy auburn hair, and the luminous, impressive eyes which glowed as the old man talked there in the Assembly Chamber (to the graduating class, at Madison, in June, 1873). His voice shook with emotion and his prophetic words, which I have never forgotten, conveyed powerfully the feeling of many thoughtful men of that time."

### PROPHETIC FORESIGHT

"There is looming up a new and dark power. I cannot dwell upon the signs and shocking omens to be greater than it ever has been since the downfall of the Roman Empire. The enterprises of the country are aggregating vast corporate combinations of unexampled capital, boldly marching, not for economic conquests only, but for political power. For the first time really in our politics money is taking the field as an organized power. \* \* \* Already, here at home, one great corporation has trifled with the sovereign power, and insulted the State. There is great fear that it, and its great rival, have confederated to make partition of the State and share its spoils. \* \* \* The question will arise, and arise in your day, though not fully in mine, 'Which shall rule,



wealth or man; which shall lead, money or intellect; who shall fill public stations, educated and patriotic, free men, or the feudal serfs of corporate capital?" —Said by Judge Ryan: *'La Follette's Autobiography.'*

### THE LAWYER'S FAME

"But yet a few years, and we, his contemporaries (speaking of a deceased lawyer, at memorial services) shall have passed away, too. Then will there be little left of Mr. ———'s professional career, except vague traditions and doubtful anecdotes. So passes away the fame of a great lawyer. We see men of inferior parts give to history names, such as they are, while lawyers, their moral and intellectual superiors, are forgotten. That is not because the life of a lawyer is less useful or honorable, but because the immediate subjects of a lawyer's labors rarely enter into what we call history. The heroes of history are not always, perhaps not often, the truly great. The faithful discharge of the duties of a profession, often exercising the most sacred measure of human faith and the highest order of human ability, the confidence and admiration of contemporaries for these, are the only glory of a lawyer."

—Remarks of Judge Ryan, Memorial Services of a deceased brother Lawyer.

### THE INDEPENDENCE OF THE BAR

"He (Judge Hubbell) tells the bar, by the God of Heaven! whom they shall take for clients. He tells the world that no lawyer at his bar shall hold his favor if he dare to advocate the cause of those in his displeasure. I tell you, sir (turning to the defendant), that when you dictate to the bar, you do not know the bar. I am proud to say it to you, face to face, before this solemn Court, that you do not know the spirit of the legal profession. You may have been in it longer than I who say it, but you have not belonged to it long enough to learn the high and honorable spirit of the profession. To dictate to an honorable young lawyer whom he shall take for his client, whose legal rights he shall assume to advocate! The legal profession has done many bad things and has produced many bad men; but it is a glorious old profession, and I love it and am proud of it. It may do in these days of demagogues to denounce it; but I say now, and always, here and elsewhere, what all history proves, that there was seldom a great stride made in human progress on which the bar was not a moving power. It is an honorable profession, an independent profession. No judge has ever cowed it or broken its independence. Touch its independence and it rebels to a man, shoulder to shoulder, standing up against the invasion of its rights. A corrupt judge may disorganize it; but a tyrannical court can neither bend it nor break it. The relation of a lawyer to his client is a peculiar and important one. Life, character, liberty, prosperity, all that is dear and sacred in life, are the trust of the client to his lawyer. The world may assail; the world may persecute; death and ruin may overhang; all men may desert, but the unfortunate is ever secure in the zeal and loyalty of his advocate. And this is the relation the defendant tampers with; this is the profession he seeks to bend to his caprice or his ambition." —From Speech in Impeachment of Judge Levi Hubbell.

### SOME OF HIS POWERS

"His unbounded fertility of resources, his command of language, his power of invective, were the wonder of the profession and the public."  
—Milwaukee Sentinel, Oct. 20, 1880.



## A JUDGE'S PRAYER

"O God of all truth, knowledge and judgment, without whom nothing is true or wise, or just, look down with mercy upon Thy servants whom Thou sufferest to sit in earthly seats of judgment, to administer Thy justice to Thy people. Enlighten their ignorance and inspire them with Thy judgments. Grant them grace, truly and impartially to administer Thy justice and to maintain Thy truth in the glory of Thy name. And of Thy infinite mercy so direct and dispose *my* heart that I may this day fulfill all my duty in Thy fear, and fall into no error of judgment. Give me grace to hear patiently, to consider diligently, to understand rightly, and to decide justly. Grant me due sense of humility, that I be not misled by my wilfulness, vanity or egotism. Of myself I humbly acknowledge my own unfitness and unworthiness in Thy sight, and without Thy gracious guidance I can do nothing right. Have mercy upon me, a poor, weak, frail sinner, groping in the dark; and give me grace so to judge others now, that I may not myself be judged when Thou comest to judge the world with Thy truth. Grant my prayer, I beseech Thee, for the love of Thy son, our Savior, Jesus Christ. Amen."

—*Composed by Judge Ryan, and found among his papers, after his death: 'Green Bag,' Vol. 25, 148.*

## THE LORD'S PRAYER

"Judge Ryan was once arguing a case in the old Supreme Court Room, at Madison, a trivial case, with only the judges, a half dozen lawyers, the State Librarian and a few loungers and a few others about, 'audience fit, though few.' Some allusion in the discussion led him to refer to the Lord's prayer, and he at once launched into a most beautiful, eloquent and affecting eulogy of that form of devotion, the divine sweetness of which he described, and in radiant terms extolling the loveliness of the author. Above all, he eulogized that portion of the prayer which asks, 'lead us not into temptation,' which he paraphrased in all the pathetic forms of which language was capable, and which he said was commended to us as a form of petition by one who knew the frailties of our nature, the attractions of guilty delight and the strength of the impulses that lead to wrong. The few hearers listened spell-bound to his matchless eloquence till the episode closed, when he resumed the argument of some stupid points in the dry case before him."

—*Reed's 'Bench and Bar of Wisconsin,' 61-2.*

## WEBSTER ON JEFFERSON

"Jefferson has more deeply impressed his opinions and theories, as well as his practical ideas of government upon the legislation and destinies of the country than any man that ever lived. He showed great contempt for forms, dignity and red-tape; said our Republic should not pattern from any other government in these respects; it was and ought to be, emphatically a democratic government. \* \* \* And Webster thought it fortunate that Jefferson's ideas prevailed."

—*Harvey's 'Reminiscences of Webster,' 212-13.*



SIR JAMES SCARLETT, LORD ABINGER (1769-1844),  
England

RECEIPT FOR SUCCESS AS AN ADVOCATE

"I take care to press home the one principal point of the case, without paying much attention to the others. I find also that when I exceed half an hour, I am always doing mischief to my client. If I drive into the heads of the jury unimportant matter, I drive out matter more important than I had previously lodged there."

Says John Campbell, in *6 Lives of the Chief Justices*, pp. 7-8: "Denman's professional emoluments at the bar, though lately considerable, had never been on the same scale as those of Scarlett and Sugden (the latter, a great chancery practitioner), and several others of the leading contemporaries, and they were then absorbed by the expenses incident to a numerous family, and style of living which without being profuse, was generous and liberal."

DEXTERITY IN GETTING IN EVIDENCE

Mr. Justice Patterson related the following of Scarlett's dexterity in the conduct of a cause; the ends of justice being attained by a theatrical display of incredulity which deceived both Brougham and Parke, the counsel on the other side. Patterson, as junior counsel, was for the defendant. Scarlett told Patterson that he would manage to make Brougham produce in evidence a written instrument the withholding of which, on account of the insufficiency of the stamp, was essential for the success of his cause. Patterson observing that even if he could throw Brougham off his guard, he would not be successful with Parke; but Scarlett said he would try. And he then conducted the case with such consummate dexterity, pretending to disbelieve the existence of the document referred to, that Brougham and Parke resolved to produce it, not being aware that Scarlett had any suspicion of its invalidity. Patterson described the extreme surprise and mortification of Brougham, with a flourish of trumpets about the 'non-existence of the document his learned friend had reckoned upon so confidently.' Patterson went on to say that the way Scarlett asked to look at the instrument, and his assumed astonishment at the discovery of the insufficiency of the stamp essential for the success of his cause, were a masterpiece of acting."

—*From Scarlett's Life by his Son.*

SCARLETT'S TILT WITH A WITNESS

At a trial in the Court of King's Bench, in 1833, between certain music publishers as to an illegal piracy of an arrangement of the song of "The Old English Gentlemen," Cooke, the actor, was subpoenaed as a witness by one of the parties. On his cross-examination by Scarlett, for the opposite side, that learned counsel questioned him thus:

"Now, sir, you say that the two melodies are the same, but are different; now what do you mean by that, sir."

To this Tom promptly answered:

"I said that the notes in the two copies were alike, but with a different accent, the one being the common time, the other six-eight time; and consequently, the position of the accented notes are different."

"Now, pray, sir, don't beat about the bush, but explain to the jury, who are supposed to know nothing about music, the meaning of what you call accent."



Cooke: "Accent in music is a certain stress laid upon a particular note, in the same manner as you would lay a stress upon any given word for the purpose of being better understood. Thus, if I were to say 'You are an *ass*,' it rests on *ass*; but if I were to say, '*You* are an *ass*,' it rests on *you*, Sir James."

Shouts of laughter by the whole Court followed this repartee. Silence at length having been obtained, the Judge with much seeming gravity, accosted the counsel thus: "Are you satisfied, Sir James?" Sir James (who had become *scarlett* in more than name) in a great huff, said "The witness may go down."

### RECIPE FOR SUCCESS AT THE BAR

"Bonhomie, and close study of human nature as indicated by the countenance. \* \* \* I take care to press home the one principal point of the case, without paying much attention to the others. I find also that when I exceed half an hour, I am always doing mischief to my client. If I drive into the heads of the jury unimportant matters, I drive out matter more important than I had previously lodged there."

—*He was the most successful advocate of his time.*

### SCARLETT'S KNOWLEDGE OF CLASSICS

"I translated into English, and when I had nearly forgotten the original, back into the Latin, by way of exercise. I became familiar with all the works of Cicero, many of his orations I translated into English. And my relish for his works has never ceased. I read also in French, the works of Racine, Boileau, Montesquieu, Rollin's History and Belles Lettres, Bossuet, and many others."

—*From Scarlett's Autobiography, 12 Am. Law Review, 43.*

### SCARLETT ON HIS VERDICTS

"My success was chiefly due to the rule I made of selecting one particular jurymen, not necessarily the foreman, and addressing the argument to him personally, working away till I felt I had convinced this man, and could rely on him, when the verdict was being considered."

—*Manchester Guardian, Nov. 17, 1920.*

Scarlett was born in 1769 and died in 1844. His greatest yearly income was \$92,500. He was altogether the greatest jury advocate of modern times.

### EXAMINATION AND CROSS-EXAMINATION

"I learned by my experience that the most useful duty of an advocate is the examination of witnesses, and that much more mischief than benefit generally results from cross-examination. I therefore rarely allowed that duty to be performed by my colleagues. I cross-examined, in general, very little, and more with a view to enforce and illustrate the facts I meant to rely upon than to affect the witness's credit, for the most part a vain attempt."

—*From C. H. Hill's Review of Campbell Scarlett's Memoir of his Father (Lord Abinger) 12 American Law Review, pp. 39-68, Oct., 1877.*

### SCARLETT'S PRESENTATION OF A CASE

"I made it my business to know and remember the principal facts, to lay the unimportant wholly out of memory; to open the case, if for plaintiff, and when I expected evidence for the defendant, in the shortest



and plainest manner, with no other object than to make the jury comprehend the evidence which they would shortly hear. I very seldom thought it necessary to make any anticipation of the defendant's case. It is, indeed, oftentimes dangerous to do so, as it leads the judge and jury to seek for support to it in the plaintiff's evidence. I found from experience as well as theory that the most essential part of speaking is to make yourself understood. For this purpose it is absolutely necessary that the court and jury should know as early as possible *de qua re agitur*. It was my habit, therefore, to state, in the simplest form that the truth and the case would admit, the proposition of which I maintained the affirmative and the defendant's counsel the negative, and then without reasoning upon them, the leading facts in support of my assertion. \* \* \* Moreover, I made it a rule in general rather to understate than overstate it without reading over and undertaking the whole evidence."

—*In 12th American Review, Art., Lord Abinger, p. 54.*

### HIS MANNER BEFORE A JURY

"A spectator unacquainted with the courts might have supposed that anybody rather than the portly, full-faced, florid man, who was taking his ease on the comfortable cushions of the front row, was the counsel engaged in the cause. Or if he saw him rise to cross-examine a witness, he might be apt to think him certainly too indolent to attend properly to his business so cool, indifferent and apparently unconcerned was the way in which the facts which his questions elicited were left to their fate, as though it were of no consequence whether they were attended to or not. Ten to one with him that the plaintiff's counsel would get the verdict, so clear seemed the case and so slight the opposition. But in the course of time, the defendant's turn would come; and then the large-headed, ruddy-faced, easy-going advocate would rise slowly from his seat, not standing quite upright, but resting on his left hand placed upon the bar, and turning sideways to the jury to commence the defense of his client. Still the same unpretending air was continued; it almost seemed too great an exertion to speak; the chin of that ample face rested upon the still more ample chest as though the motion of the lips alone would be enough for all that might have to be said. So much for the first impression. A few moments' reflection sufficed to dispel the idea that indolence had anything to do with the previous quiescence of the speaker. Now it became clear that all the while he seemed to have been taking his ease bodily, he had been using his powers of observation and understanding. That keen, gray eye had not stolen glances at the jury, nor at the witnesses either, for nothing. Nor had those abandoned facts, drawn out in cross-examination, been unfruitful seeds cast in barren places. Low as the tone of voice was, it was clear and distinct. It was not a mere organ of sound, but a medium of communication between the mind of the advocate and the minds of the jury. Sir James Scarlett did not attempt, like Denman or Brougham, to carry the feelings of a jury by storm before a torrent of invective or of eloquence; nor was there any obvious sophistry, such as occupied too large a space in the speeches of Campbell or Wilde; it was with facts, admitted, omitted or slurred over, as best suited his purpose, and with inferences made obvious in spite of prepossessions created by the other side, that this remarkable advocate achieved his triumphs."

—*Wellman's 'Art of Cross-Examination,' 166-7.*

### CHARACTERIZATION BY C. H. HILL

"He had great knowledge of law, and readiness in using it, great quickness of apprehension, great powers of analysis and of argumentation, a most sure-footed judgment and most consummate tact. His power, too, of concentrating his mind upon the matter before him must have been



remarkable. Besides these, his greatest gifts, and which reveal the secret of his success, he had other personal advantages which helped to make that success almost unique. He was a man of much general culture; his person was handsome, and his bearing that of a gentleman; his manners were winning, his voice sweet and musical; and his speaking, although hardly eloquent, singularly persuasive. With such qualities and with constantly increasing experience, it is no wonder that he became in time a consummate advocate before both common and special juries, and also with the courts; for his success in arguing questions of law, both at *nisi prius* and in banc before a bench that included during his term men like Lords Ellenborough and Tenterden, and Nayley, Holroyd, Littledale, Parks and Patterson, was not less eminent than his success with juries, and he is said to have gained an ascendancy over Lord Tenterden equal to that which Erskine had previously gained over Vice-Chancellor Shadwell.

"Touching Scarlett's influence over Lord Tenterden, an amusing anecdote is told of the retort of Mr. Adolphus, the eminent criminal lawyer, when Scarlett rather arrogantly told him to remember he was not at the 'Old Bailey.' 'I feel I am not at the Old Bailey,' he replied; 'for there the judge controls the counsel, but here the counsel controls the judge'."—12 *Am. Law Review*, Art. Lord Abinger, 53.

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### TRAITS OF AMERICAN CHARACTER

"Our travels and voyages and general reading, will all be found tinged with the practical tendency. So, in short, are our whole lives. Engaged in the real old age of the world, on a new theatre, three thousand miles distant from the homes of our ancestors, and earnest to perform well our parts in the new drama of a democratic government under a representative form, our first duty seems to be to draw practical instruction from all the treasures of the past, to enlighten and strengthen, enrich and guide us in our new undertaking. Hence, as is right, we bring home like the bee, honey from every flower, rather than flowers without honey. We go to India for useful drugs and silks and not for Buddhism. We go to the Celestial Empire for teas, not despotic principles of government or miserable rats and dogs for food. We visit the land of Cicero and Brutus for rags even for our paper, and sulphur for arts, more than for gems, paintings, or mosaics, though not wholly neglecting the latter, when leisure and wealth permit; and to the neighborhood of the Pyramids and the land of the bow string for fruits and dyestuffs, but not Mohammedanism or broken statues. From the arid wastes around Athens and Rome and Jerusalem, also we are willing to obtain almost everything that remains which is useful; recollections and helps, from days gone by, to liberty and devotion, however degraded may the Saliotes or Arabs that now wander among the ruins where Pericles and Paul addressed the multitude or those where our holy Savior taught and died. But few, only very few, of our countrymen will any where turn aside for relics of the fine arts, to the neglect of what is immediately conducive to gain and practical utility, though some—and let letters and science crown such with success—may contrive to advance both objects together, by their great ingenuity, ample resources, untamable enterprise and munificent liberality."

—From an address by Levi Woodbury, delivered in New Hampshire and Massachusetts, in 1850.



HENRY W. SCOTT (     -     ), Kansas

## DEFENSE OF AN EPILEPTIC FOR MURDER

"To say he feigned epilepsy in prison for his defense is to say that for two years he meditated the crime; that he anticipated this defense; that he, this boy, studied the mysteries of science, learned the symptoms of disease, and then practiced the simulation. We have called for proof the living members of the family. Ah, more! we have invoked the testimony of the dead. We have called from the grave that father and others to the bar of this court, to plead with their living voice and their skeleton fingers for justice to that forsaken son. His sisters have said that when the family learned of this disorder the strict injunction was laid upon them all never to tell it abroad. 'For then the young people would think he was not right and would not go in his company any more.' How like that tenderest touch in the fictions of the classic tongues, when Andromache stood upon the towers of Illium and saw Hector dragged by swift horses toward the hollow ships of the Greeks! \* \* \* The husband, the father, the hero is gone! They all knew of his disease; they sought to shield him from the rough approaches of the world. He, with his ambition wasted, with his mind weakening, can sleep no more. 'Would that the night were gone!' I repeat his prayer."

—Henry W. Scott in *Defense of Allen C. Laros, for Poisoning his Father.*

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## EDUCATION

" 'The world moves,' said Galileo, and in despite of persecution and dungeons, it did move; and the moral, literary and political world moves also; and will by your efforts and of those like you continue to move with such rapidity and force as never to be stopped again in its onward career. In the circle of blessings, this course of contributing something, however little, to give to everything a right and vigorous impulse, and to derive from everything moral as well as mental improvement, is open before and around us daily, and even hourly, and in the smallest as well as loftiest objects. Thus it has with justice, no less than beauty, been said:

" 'There is religion in a flower;  
Its still small voice is as the voice of conscience.  
Mountains and oceans, planets, suns and systems,  
Bear not the impress of Almighty power  
In characters more legible than those  
Which he has written on the tiniest flower,  
Whose light bell bends beneath the dew-drop's weight.'

"So is there religion in a crystal or a shell. They all speak to us as living miracles when our minds are duly awakened by their wonders. So the fall of only the autumnal leaf is sufficient to point a moral. The fall of an apple suggested once to the greatest mathematicians and astronomers, a hint for the theory of gravitation for the whole planetary system. The revolutions of power preach trumpet-tongued, to the politician and statesman. And thus the active well disposed mind can always teach and be taught, improve others and be itself improved, and in short find:

" 'Tongues in trees, sermons in stones, and good in everything.' "

—Levi Woodbury, *'Remedies and Defects in American Education,'*  
*Washington, D. C., 1842, 3 Woodbury's Writings, 73-4.*



JAMES BROWN SCOTT (1866- ), Washington D. C.

### KENT AND MARSHALL COMPARED

"Comparisons are frequently drawn between Marshall and Kent, and stress is laid upon the fact that the former divined the judgment from the circumstances of the case, while the latter reached a conclusion based upon a careful and painstaking examination and study of the authorities.

"This is true, but it does not follow that Kent would not have reached Marshall's conclusion had he trusted to the strength of the understanding. It is, however, the fact that the one preferred to fortify his reason while the other preferred reason unadorned. The difference, while temperamental, was, it would seem, likewise a difference in the quality of the mind. Marshall stood alone, either because he did not know the authorities or because the vigor and originality of his mind spurned reliance upon others. In this way Marshall and Shaw were strangely alike. Kent, on the other hand, knew the authorities and preferred to intrench himself behind them. In this respect and this alone, Kent and Story are veritable brothers in the law. Both types are useful, and the four must be taken as ideals of the bench.

"In one respect, however, the comparison is not wholly fair to Kent, because as Judge and Chancellor he dealt with problems covered by authority, and therefore susceptible of learned treatment. In questions of Constitutional Law, Marshall found few precedents and it is his glory that he has left many. If Kent's method of approach be considered, it will be seen that the methods of the two were alike in that Kent decided the case on the facts and then searched for the law. Marshall declared the law and precedent at one and the same time.

"The curious reader who cares to pursue the subject further and test the powers of both applied to a concrete problem will find ample material in the various cases arising out of the exclusive grant of the State of New York to Messrs. Fulton and Livingstone to navigate the waters of the State. As a citizen of New York, with an inclination to maintain the just prerogative of the State, Kent decided in favor of the validity of the exclusive grants. Entrusted with the prerogatives of a nation, Marshall supported the power and dignity of the nation. Both were without authority, and while they did not and could not, from the circumstances of the case, meet upon common ground, intellectual powers of the highest kind are displayed in their discussion and decision of underlying principles.

"It is not perhaps beyond the mark to suggest that Kent was right on the question of principles involved, and that the superb reasoning of Mr. Justice Curtis in *Cooley vs. the Port Wardens* (12 Howard, 299, 1851) fully sustains the contentions of the learned Chancellor that the power of Congress to regulate does not divest the State until Congress has acted and thus pre-empted the field of legislation. As to the effect of the general license it may well be that the great Chief Justice was right. That Kent was right on principle is the measured judgment of the late Professor Thayer.

"As a further test of Kent's quality of mind compared to Marshall's resort may well be had to *Hicks vs. Hotchkiss* (7 Johnson's Chancery Rep., 303), in which Kent took issue with Marshall's reasoning in *Sturges vs. Crowningshield* (4 Wheat., 122). It is of interest to note that Kent's view prevailed in the leading case of *Ogden, vs. Saunders* (12 Wheat., 213), notwithstanding Marshall's dissent.

"If Marshall's monument stands at the base of the Capitol, it is not without reason that the bronze statue of Kent is housed within the Library of Congress.



"If we now turn from the domain of Constitutional Law in which Marshall walks a lord among men, and surveys the other fields of law, the partisan of Kent may well court comparison. In the range and variety of the Common Law, the Chief-Justice was deficient, in technical learning, although the breadth of his mind is always evident. Years of profound study and meditation had made Kent a master of the intricacies of the common law, and he unravelled a knotty problem as easily as a child unwinds a ball of string. Soundness of reason marks both of the Chief-Justices, but the learning of Kent is no less marked than its absence in Marshall.

"If the attention be fixed upon Chancery the verdict must be the same, for Kent is the admitted master in Equity. English schoolmen may discuss the various merits of Nottingham, Hardwicke, and Eldon, and award the palm to the one or the other, or resort to nice distinctions and qualifications. But the mere mention of American Equity suggests Kent at once the founder and expounder of Chancery in the United States. That he is without a rival in this peculiar domain is but faint praise, for he is without a competitor. The seven volumes of Johnson's Chancery Reports do not admit of comparison. Chief-Justice Marshall has not a few equity decisions to his credit, but in this field he is outclassed by Kent. Indeed, well informed persons there are, such as the editor of this series (William Draper Lewis), who would not base Marshall's claim to distinction upon his services to equity.

"And finally, if International Law be considered, the scales incline to the side of Kent. The present writer has read in detail the various judgments of both in the field of international law, and has little hesitancy in awarding to him the primacy. It is his personal opinion that Marshall is equally, perhaps more admirable in international than in Constitutional Law, for on this subject the questions of statesmanship and public policy play a greater part because an International role, than in the restricted though not less subtle field of Constitutional Law. Marshall was not without guidance in matters of International Law, and his judgments are based upon precedent as well as theory.

"Yet Kent stands the severest test, and the wealth of carefully digested authority makes each case a treatise in itself. Judge Duer's comment on the case of *Griswold vs. Waddington* (15 Johnson's, 57; 16 Johnson's, 438) is in point and deserves quotation. \* \* \* If to this rounded, universal, and almost perfect equipment we add the ever present and continuous claim of expounder of our law, the conclusion seems well-nigh inevitable that Kent rightly assumes his place as the first figure in American Jurisprudence." James Brown Scott was Solicitor for the State Department; Prof. International Law in George Washington University.—2 *Great American Lawyers*, 528-533.

Mr. Scott was born in Kincardin, Ont., Canada; was graduated at Harvard, 1890; took the course in international law at Berlin, Heidelberg and Paris, 1891-4; practiced law in Los Angeles, Cal., 1894-9; organized the present law department in the University of S. Cal., 1896, and was dean, 1896-9; was professor of law at Univ. Ill., 1899-03, at Columbia Law School, 1903-6; and has been professor of international law at Geo. Washington Univ. since 1906; delegate to The Hague Peace Conference of 1907. He is a noted authority on international law.



## JOHN SELDEN (1584-1654), England

### SAYINGS OF JOHN SELDEN

"The proverbial assertion that Lady Common Law must lie alone, never with me. Law must be liberalized by literature."

"Do not undervalue the enemy by whom you have been worsted."

"Wise men say nothing in dangerous times."

"Never tell your resolution beforehand."

"He that will keep a monkey, 'tis fit he should pay for the glasses he breaks."

"Wit and wisdom differ; wit is upon the sudden turn, wisdom is in bringing about ends."

"Nature must be the groundwork of wit and art."

"Women ought not to know their own wit, because they will still be showing it, and so spoiling it."

"No man is the wiser for his learning. It may administer matter to work in, or objects to work upon; but wit and wisdom are born with a man."

"Most men's learning is nothing but history duly taken up."

"Few men make themselves masters of things they write or speak."

"Equity is a roughish thing, for law we have a measure. Equity is according to the conscience of him that is chancellor; and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure."

"An epitaph must be fit for the person for whom it is made: for a man to say all the excellent things that can be said upon one, and call that an epitaph, is as if a painter should make the handsomest piece he can possibly make, and say, 'Tis my picture.'"

"A gallant man is above evil speaking."

"Old friends are best. King James used to call for his old shoes, for they were easiest for his feet."

"Humility is a virtue all preach, none practice."

"'Tis not the eating, nor 'tis not the drinking, that is to be blamed, but the excess."

"There is no church without liturgy, nor indeed, can there be conveniently, as there is no school without grammar."

"Of all actions of a man's life, his marriage does least concern other people; yet, of all actions of our life, 'tis most meddled with by other people."



"Marriage is a desperate thing: The frogs in Aesop were extremely wise; they had a great mind to some water, but they would not leap into the well, because they could not get out again."

"Money makes a man laugh."

"'Tis a vain thing to talk of a heretic; for a man for his heart can think no otherwise than he does think."

"Opinion is something wherein I go about to give reasons why all the world should think as I think."

"Every man has his religion. We differ about trimming."

"Alteration of religion is dangerous, because we know not where it will stay."

"The way to find out truths is by others' mistakes."

"Transubstantiation is nothing but rhetoric turned to logic."

"Philosophy is nothing but discretion."

"Pleasure is nothing but the intermission of pain, the enjoying of something I am in great trouble for till I have it."

"Words must be fitted to a man's mouth. 'Twas well said of the fellow who was to make a speech for my lord mayor, he desired to take the measure of his lordship's mouth."

"Affection is a thing wherein I look after the pleasing of myself."

"Patience is the chiefest fruit of study."

"Never kings dropped out of the clouds."

"There is no stretching of power. 'Tis a good rule: Eat within your stomach, act within your commission."

"General texts prove nothing."

"King James said to the fly: 'Have I three kingdoms, and thou must needs fly into my eye'?"

"Put out the candle, and they (light and heat) are both gone; one remaining without the other: so 'tis betwixt faith and works."

"Verse proves nothing but the quantity of syllables, they are not meant for logic."

"Men are not troubled to hear a man dispraised, because they know though he be naught, there's worth in others. But women are mightily troubled to hear any of them spoken against, as if the sex itself were guilty of some monstrosities."

"Idolatry is a man's own thought, not in the opinion of another."

"Commonly we say a judgment falls upon a man for something in him we cannot abide."



"Straws show which way the wind blows."

"Above all things—Liberty." (The motto which was placed upon his books).

"The king cannot make a gentleman of blood, nor God Almighty, but he can make a gentleman by creation."

"Thou thinkest what a little foolery governs the world."

"The boy who would have married his grandmother, said to his father: 'You married my mother, why should I not marry yours?'"

"'Tis much the doctrine of the times that men should not please themselves, but deny themselves everything they take delight in, not look upon beauty, wear no good clothes, eat no good meat, etc., which seems the greatest accusation that can be upon the Maker of all good things. If they are not to be used, why did God make them?"

"Rhetoric without logic is like a tree with leaves and blossoms, but no root; yet more are taken with rhetoric than logic, because they are caught with fine expressions when they understand not reason."

"I have taken much pains to know everything that is esteemed worth knowing amongst men; but with all my reading, nothing now remains to comfort me at the close of this life but this passage of St. Paul: 'It is a faithful saying, and worthy of all acceptance, that Jesus Christ came into the world to save sinners.' To this I cleave, and herein do I find rest."

"It is not juggling that is to be blamed, but much juggling; for the world cannot be governed without it."

"They that cry down moral honesty, cry down that which is a great part of my religion, my duty toward God, and my duty toward man. What care I to see a man run after a sermon, if he cozens and cheats as soon as he comes home? On the other side, morality must not be without religion; for if so, it may change, as I see convenience. Religion must govern it. He that has not religion to govern his morality is no better than my mastiff dog; so long as you stroke him, and please him, he will play with you as finely as may be; he is a very moral mastiff; but if you hurt him, he will fly in your face, and tear out your throat."

"The happiness of married life depends upon making small sacrifices with readiness and cheerfulness."

"Talk what you will of the Jews, that they are cursed: They thrive wherever they come; they are able to oblige the prince of their country by lending him money; none of them beg; they keep together; and as for their being hated, why Christians hate one another as much."

"They that govern most make least noise. In rowing a barge, they that do drudgery work, slash, puff, and sweat; but he that governs, sits quietly in the stern, and scarce is seen to stir."

"When a doubt is propounded, learn to distinguish, and show wherein a thing holds, and wherein it doth not hold. The not distinguishing where things should be distinguished, and the most confounding, where things should be confounded, is the cause of all the mistakes in the world."



"There is no book on which we can rest in a dying moment but the Bible."

Never in the whole history of literature was such prodigious literary activity crowded into so brief a span of life as into the ten years of Selden's life from his 26th to his 36th year. The "Table Talk" still lives. Here we have the saint, the sage, and the scholar expounding under the genial influence of the table, mingling with wisdom, and descending for a time to illuminate for an "ordinary apprehension, the highest points of religion and the most important affairs of State." Selden was born in 1584; died 1654.

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### OLD AGE AND THE LAW

"Man's capacity for happiness is certainly varied, since I have found equal pleasure in the busy city and here (by the sea near Los Angeles, California) in the seclusion of a small watering place, listening to the incessant moaning of the disconsolate sea, with little companionship, but plenty of good books to read. \* \* \* I do not think of coming here to live; but I should be glad of an opportunity of spending other summers here like that just closing, engaged in the genial occupation of Lotus eating and rejoicing in the ebb and flow of the sea, shimmering in the triumphant and unvarying sunshine. And this brings me to another theme. Is it not time that you and I were leaving off the courts and the law, with all of the turmoil of this weary and unintelligible world, forever incorruptible, both to the precept and example? I am beginning to think so; and to long for rest like the overworked steer. Still the future is as yet not quite clear to me; perhaps it will never be."

—*U. M. Rose of Little Rock, Ark., (1834- ), from Terminal, Cal., to John F. Dillon, N. Y. City, Sept. 21, 1903.*

Mr. Rose was then in his 70th and Judge Dillon in his 72nd year.

—*Author.*

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### PLAINTIFF WITH CROOKED LEG

At one time, Wm. McKinley was pitted against John McSweeney, one of the most brilliant lawyers of the Ohio bar. Plaintiff, in his suit for damages, charged the defendant surgeon set his broken leg improperly, making him bow-legged. McKinley defended the surgeon. In the trial, McSweeney exhibited his client's injured limb, which was crooked, and the case looked bad for the surgeon. On cross-examination, McKinley asked that the other leg be bared also; though McSweeney vigorously objected, the Court so ordered. The second leg was more crooked than the one set. In his speech McKinley said: "My client seems to have done better by this man than Nature herself did. I recommend that plaintiff have his second leg broken, and then set by the surgeon to match the first one." The jury quickly found for the defendant. — *The Author.*



## WILLIAM H. SEWARD (1801-1872), New York

### DUTY OF COUNSEL

“ ‘Thou shalt not kill’ is a commandment addressed, not to him alone (the prisoner), but to me, to you, to the Court, and to the whole community. There are no exceptions from that commandment, at least in civil life, save those of self-defense, and capital punishment for crimes in the due and just administration of law. There is not only a question, then, whether the prisoner has shed the blood of his fellow man, but the question whether we shall lawfully shed his blood. I should be guilty of murder, if, in my present relation, I saw the executioner waiting for an insane man, and, failed to say, or failing to do in his behalf, all that my ability allowed. \* \* \* If my error would thus be criminal, how great would yours be if you should render an unjust verdict? \* \* \* If any prejudice of witnesses, of the imagination of counsel, of any ill-timed jest shall at any time have diverted your attention; or if any prejudgment which you may have brought into the jury box, or any cowardly fear of popular opinion shall have operated to cause you to deny to the prisoner that dispassionate consideration of his case which the laws of God and man exact of you, and if, owing to such error, this wretched man fall among the living, what will be your crime? You have violated the commandment, ‘Thou shalt not kill.’ \* \* \* Nor is the Court itself above the commandment. If these judges have been influenced by the excitement which has brought this vast assemblage here, and under such influence, or under any other influence, have committed voluntary error, and have denied to the prisoner or shall hereafter deny to him, the benefit of any fact or any principle of law, then this Court will have to answer for the deep transgression at the bar at which we shall meet again. When we appear there, none of us can plead that we were insane and did not know what we did; and by just so much as our ability and knowledge exceed those of this wretch, whom the world regards as a fiend in human shape, will our guilt exceed his, if we be guilty.”—*William H. Seward, to Jury, in Defense of Freeman, the demented negro, for murder, 1846.*

### NAPOLEON

“He was an emperor. But he saw around him a mother, brothers and sisters, not enobled; whose humble state reminded him and the world that he was born a plebian; and he had no heir to wait for the imperial crown. He scourged the earth again, and again fortune smiled on him even in his wild extravagance. He bestowed kingdoms and principalities upon his kindred, put away the devoted wife of his youthful days, and another, a daughter of the Hapsburg imperial house joyfully accepted his proud alliance. Offspring gladdened his anxious sight; a diadem was placed upon its infant brow and it received the homage of princess, even in its cradle. Now he was indeed a monarch, a legitimate monarch, a monarch by divine appointment, the first of an endless succession of monarchs.

“But there were other monarchs who held sway in the earth. He was not content, he would reign with his kindred alone. He gathered new and greater armies, from his own land, from subjected lands. He called forth the young and the brave, one from every household, from the Pyrenees to the Zuder Zee, from Jura to the ocean. He marshalled them into long and majestic columns, and went forth to seize that universal dominion which seemed almost within his grasp.



"But ambition had tempted fortune too far. The nations of the earth resisted, repelled, pursued, surrounded him. The pageant was ended. The crown fell from his presumptuous head. The wife who had wedded him in his pride forsook him when the hour of fear came upon him. His child was ravished from his sight. His kinsmen were degraded to their first estate, and he was no longer emperor, nor consul, nor general, nor even a citizen, but an exile and a prisoner on a lonely island in the midst of the wild Atlantic. Discontent attended him here. The wayward man fretted out a few long years of his yet unbroken manhood, looking off at the earliest dawn and in evening's latest twilight, toward that distant world that had only just eluded his grasp. His heart corroded. Death came, not unlooked for, though it came even then unwelcome. He was stretched on his bed within the fort which constituted his prison. A few fast and faithful friends stood around, with the guards who rejoiced that the hour of relief from long and wearisome watching was at hand. As his strength wasted away delirium stirred up the brain from its long and inglorious activity. The pageant of ambition returned. He was again a lieutenant, a general, a consul, an emperor of France. He filled again the throne of Charlemagne. His kindred pressed around him, again invested with pompous pageantry of royalty. The daughter of the lone line of kings again stood proudly by his side, and the sunny face of his child shone out from beneath the diadem that encircled its flowing locks. The marshals of Europe awaited his command. The legions of the old guard were in the field, their scarred faces rejuvenated and their ranks, thinned in many battles, replenished. Russia, Prussia, Denmark and England gathered their mighty hosts to give him battle. Once more he mounted his impatient charger and rushed forth to conquest. He waved his sword aloft and cried, '*Tete d'armee.*' The feverish vision broke, the mockery was ended. The silver cord was loosened, and the warrior fell back upon his bed a lifeless corpse. This was the end of earth. The Corsican was not content."—*William H. Seward.*

#### THE WEAKNESS OF A WRITTEN CONSTITUTION

The first time Don Piatt met Wm. H. Seward was in the U. S. Senate with a friend who introduced him to the Senator. Seward invited them to dine with him the following Sunday. Piatt at that time ventured to remark that his "appeal to a higher law" caused excitement. "It was an imprudent speech," Seward said in reply, "and I ought to have been more careful." "Not," said Piatt, "if you believe it."

"My young friend," said Seward, "we are warned to keep to ourselves what we do not believe. It is as well, frequently, to conceal what we do believe. There is apt to be public damnation in both. We are all bound by tradition to the tail-end of a paper kite called a Constitution. It is held up by a string that one of these days, a wind, a little stronger than usual, will break, and then we shall all tumble."

"Why, Mr. Senator," Piatt said in some heat, "you certainly do not believe that of our Constitution?"

"I certainly do," Seward replied, "but I generally keep it to myself. A written Constitution is a superstition that presupposes certain impossibilities. The first is that it can express all the wisdom of the past, and anticipate all the wants of the future. It supposes that its creatures were saints and sages. We have had those two classes, but never the two qualities united in one class. The saints were not sages, and the sages were not saints."

Piatt broke into a hot defense of the sacred instrument, to which Seward listened very politely, and when Piatt ended, said abruptly:

"That is your blood; you are a Huguenot by descent, and all your opinions are convictions. I knew a relative of yours, once, John H. Piatt. He gave a large fortune to the support of the government in the War of



1812, and in consequence died in prison, where he was held for debt. You see your uncle was a patriotic saint, but he was not a sage. However, we will not lose our opinions, for nothing makes a devotee so mad as to pull the stuffing out of his god, and we never can succeed by making people mad."

—*Wm. H. Seward, Don Piatt's 'Men Who Saved the Union,' 136-7.*

### FAMOUS SAYINGS OF SEWARD

"To maintain the slave-holding power is to subvert the Constitution."

—*Speaking against the admission of Texas.*

"It (slavery) must be abolished, and you and I must do it."

—*In the Campaign of '48, at Cleveland, O.*

"A higher law than the Constitution."—*In '50 urging the admission of Calif. into the Union.* He declared the national domain was devoted to liberty, not only by the constitution, but by "a higher law than the constitution."

"An irrepressible conflict" between freedom and slavery.

—*In '58, at Rochester, N. Y.*

### THURLOW WEED ON SEWARD

Thurlow Weed himself told the following story. Me and Mr. Seward were riding up Broadway, N. Y. and when passing the bronze statue of Lincoln, in Union Square, Seward said, "Weed, if you had been faithful to me, I should have been there, instead of Lincoln."

"Seward," replied Weed, "is it not better to be alive with me than to be dead and set up in bronze?"

—*Wm. H. Seward, 'Random Recollections,' by H. B. Stanton, 194.*

### JOHN BIGELOW'S ESTIMATE OF SEWARD

"The college-bred Seward was not in any proper sense of the Words a liberally educated man. He was licensed to practice law, but he embarked in politics so early in life that he never was much of a lawyer. He may fairly enough be said to have spent his entire adult life in politics, which though calculated to develop a certain range of faculties very highly, is not apt, in our country at least, to make an entirely symmetrical man."

—*'Retrospections of an Active Life.' Vol. 3, page, 627.*

Wm. E. Gladstone, however, said Seward's defense of the negro Freeman, on the plea of insanity, "The greatest forensic effort in the English language."

Chas. Sumner, also said of the same case, that it was worth more for fame than the whole forensic life of Choate.

And Seward said of Sumner:

"In mind Sumner was a scholar, somewhat dilettante; at heart he was a reformer, ardent and resolute. He was a cultured lawyer, but his studies were on the theoretical side of his profession. He had been chosen as the best exponent of the indignation felt in Massachusetts against Webster's sensitiveness to the rights claimed by slavery."

—*1 Frederic Bancroft's Life of Seward, 298.*

### SEWARD'S CHARACTERIZATION OF BUCHANAN

"I think Buchanan has conclusively proved two things: 1st., that no State has the right to secede, unless it wishes to; and 2nd., that it is the President's duty to enforce the laws, unless somebody opposes him."

—*2 Nicolay and Hay's Lincoln, 371.*



## NEW YORK'S GREATEST STATESMAN

"In the heart of New York, a bronze statue of heroic size has been erected to the memory of New York's greatest statesman. It will darken into slow decay, as his memory fades into oblivion without probably one of the busy millions knowing that, for four years, nothing stood between that great commercial center and the utter ruin of a bombardment but the subtle intellect and patriotic heart of that one man, without a navy, possessed of no coast defenses, our cities on the seas were at the mercy of the weakest naval power of Europe. In all this I detract nothing from the fame of Lincoln. Seward was a greater man in one thing, but not in all things, than Abraham Lincoln; and were we the enlightened people we claim to be, the great Secretary's name would live along the pages of our history as that of one whose cultured mind, indomitable will, high courage, and pure patriotism, made a debt we were proud to acknowledge, thus honoring ourselves in honoring him."

—*Don Piatt's 'Men Who Saved the Union,' 170.*

## SEWARD'S ACHIEVEMENTS BEFORE SECRETARY OF STATE

"His mind and memory are impressed on many of the organic laws of New York that have since spread out through the Union over a continent. He first developed opposition to corporate monopolies, if he failed to restrain altogether that monstrous evil from which the whole country now suffers, it was no fault of his. He, among the first, favored a system of public education. He was the favorite of public works, such as the enlargement of the Erie Canal, as well as other improvements in aid of the cheap distribution of products. He removed the honourous disabilities imposed upon foreigners. The reform in courts of law, since so generally copied by other States, came from him. He suggested and carried to success a geological survey of the State. He got a general banking system, and established asylums for the insane. To William H. Seward belongs the credit of abolishing imprisonment for debt, while he quieted effectually the great anti-rent war that at one time threatened the political and social life of the State."—*Piatt's 'Men Who Saved the Union,' 162-3.*

## SEWARD'S LIFE OF JOHN QUINCY ADAMS

"Seward's 'Life of John Quincy Adams,' written in 1840, I pronounce among the best biographies I ever read."—1 *John W. Forney's 'Anecdotes of Public Men,' 353.* Over 40,000 copies were sold.

"Seward said of J. Q. Adams:—"I have lost a patron, a guide, a counselor, a friend—one whom I loved scarcely less than the dearest relations, and venerated above all that was mortal among men."

## BEN PERLEY POORE'S ESTIMATE

"Seward had not that magnetic mind which could subordinate others, or the mental courage to take the helm in the hour of victory, but he relied upon the pecuniary operations of an unscrupulous lobby, which had followed him from Albany, and sought to fill its military chest with the spoils of the public printing and binding."

—2 *Perley Poor's Reminiscences, 54.*

## GATH'S CHARACTERIZATION

"Seward played with the integrity of the school system to win sectarian votes and was betrayed by Greeley, his newspaper factor."

—*Gath in Feb., 1898.*



## FOUR GREAT CRIMINAL CASES

"His reputation was made in four great criminal cases, those of Abel F. Fitch, et al., of Freeman, of Wayatt and of Van Zandt, the first named bringing him especially the good will of opponents of slavery. Toward the end of his career at the bar, however, he changed from a general practitioner to a patent lawyer, and as such had a lucrative practice."

—*Ency. Brit.*, Art. 'Seward.'

## LETTER-BOXES AND CARRIERS DUE TO SEWARD

We are indebted to Seward for street letter-boxes, and the first attempt by letter-carriers in the cities and towns. This he advocated in the Senate of the U. S., in 1850-1.

## THE FREEMAN MURDER CASE

"A demented negro, named Freeman, just out of the State prison, at Auburn, N. Y., killed without the slightest provocation, and with revolting brutality, a whole family of the neighborhood. He was arrested. The people roused to frenzy, were with difficulty restrained from lynching him. Seward was away at the time. He had recently been counsel in another case where the then novel and unpopular defense of insanity had been set up and maintained by him with some success; and it was feared he might be induced to act for Freeman. Threats of personal violence were rife, should he appear for the defense. Seward was present in court when the lunatic was brought in to be arraigned; he had no counsel and, thereupon, finding no other lawyer willing to defend him, Seward volunteered to appear for him. After an able defense, he was convicted. The insanity charge was proved beyond a doubt, but conviction, under the excited and prejudiced condition, was, out of the question, and he was found guilty. A higher court set aside the verdict, on Seward's application, and ordered a new trial; but before a second trial took place, his mania so developed that it was impossible to try him again. He lived only a short time, and an examination disclosed an organic disease of the brain, from which he had long been suffering.

This was after Seward had been Governor, in the year 1846. John Van Buren, attorney-general of the State, appeared for the people, and Samuel Blatchford, afterwards an Associate Justice of the U. S. Supreme Court, assisted Seward. Upon the preliminary trial, to test the question, as to the prisoner's sanity, Mr. Seward said:—

"In due time, gentlemen of the jury, when I shall have paid the debt of nature, my remains will rest here in your midst, unharmed, neglected, spurned! But, perhaps, years hence, when the passion and excitement which now agitate the community shall have passed away, some wandering stranger, some lone exile, some Indian, some negro, may erect over them an humble stone, and thereon this epitaph — '*He was faithful*'."

## STANDING AS A LAWYER

Says Elbert Hubbard, in his *Little Journeys to the Homes of American Statesmen*, Art. "Seward:"

"When elected Governor of New York, at the age of thirty six, Seward was considered one of the very first among the lawyers of the State. Before a court, his quiet but firm persistence along a certain line often dictated a verdict. The faculty of grasping a point firmly and securely, was his in marked measure."

And Mr. Justice Blatchford, adds:—

"When elected United States Senator, Seward had one of the most lucrative practices in the State of New York, outside of New York City."

—*Bancroft's 'Seward.'* 182.



## DESCRIPTION AS A LAWYER

"Seward had not the grace, the elegance of diction, the style of oratory of an Everett. Nor had he that sweet, melodious, musical voice that magnetizes and powerfully sways an audience. But his arguments were strong, and by them, rather than by any fictitious means, he sought to influence, and generally succeeded. He studied everything obtainable bearing upon the question in dispute, fortifying his contention by pertinent precedents and decisions. It would be difficult to conceive of anyone being a harder student or who could, day after day, week after week, and month after month, be and continue to do, without any abatement of force and energy, so much mental labor. Going into court he always attracted, compelled attention. There was something in his appearance that commanded the highest respect. He always impressed me as being a gentleman of the old school. And he was especially happy in briefly and strongly and naturally summing up his side of the case."

—*General Frank Chamberlin, of Albany, who was a student in Seward's office in 1848-9, written in Jan. 1898; 1 Bancroft's Life of Seward, 185.*

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 JOHN RANDOLPH OF ROANOKE

When Randolph was twenty-six, Patrick Henry, who had won his laurels thirty-six years before as the first orator in America, was billed for a speech at Charlotte Court House, in 1799, to induce the Virginia legislature to repeal its condemnation of the government. Randolph was a candidate for Congress, seeking the same that he might oppose Henry. The youth and fragile appearance of the untried speaker who had the hardihood to appear against Henry were cause for merriment and pity among the crowd. But they soon found that he was able to take care of himself. His setting forth in clear ringing tones and forcible language of the views of the Republican-Democrats; his arraignment of the government and his proclaiming the rights of the States, were so lucid and powerful as to astonish and electrify his audience, who listened to him spellbound for three hours. From that day he became a power in Virginia, and soon after in Congress. For fourteen consecutive years he continued to represent his district. During the first half of that period he was the champion and leader of his party.—*The Author.*

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 WEBSTER ON CALIFORNIA—A PROPHECY OF 1840

"I have been looking over some maps of California, and informing myself more particularly about that distant country; and, in tracing up the Western coast of America, my eye instinctively rested on a spot that, sooner or later, must become part and parcel of the United States. Do you know that beautiful bay of San Francisco is capable of accommodating the whole naval power of the world?"

"I know not how this will come about; I cannot see so far as that. I hope we shall acquire it by purchase; but one of these days we shall have it."—*Harvey's 'Reminiscences of Daniel Webster,' 204.*



## GEORGE SHARSWOOD (1810-1883), Pennsylvania

### ON READING AND STUDY

"In the race to accomplish great things, we seem to have forgotten the good old maxim, *festina lente* (hasten slowly)—the unquestionable axiom that accurate knowledge of the first elements, well engrafted in the mind by frequent repetition, goes much farther in making a thorough scholar than lessons, recitations and lectures, intended to put the pupil in possession of everything that ever was or is known. Voluble talkers may be thus manufactured, but not scholars or students. They may fancy that they are *savans*, but the world soon discovers them to be superficial sciolists. They forget all they were taught in less time than it took them to acquire it, and have failed to obtain what is the most important of all, a love of knowledge and the art of learning as things ought to be learned.

"\* \* \* Read only few books, but understand them thoroughly. Let them be the standard works—the masterpieces. Study but few subjects, but conquer such as you do study. \* \* \* Accurate knowledge is that which is truly power. It has certainty, and therefore force. It gives assurance and confidence to the possessor. It makes him a close, logical thinker; he sees clearly his way, and his course is simple, direct and onward."

—George Sharswood, of Penn.

### A LAWYER'S TEMPTATIONS

"There is certainly without exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity, in which so many delicate and difficult questions of duty are continually arising. There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial as well as the moral courage, which belong commonly to the riper years. High moral principle is the only safe guide, the only torch to light his way amidst darkness and obstruction."—George Sharswood.

### IMMORTALITY

"Is it possible that a being so fearfully and wonderfully made as man, and animated by a spirit still more fearful and incomprehensible, was created for the brief term of a few revolutions of the planet he lives on? Shall his own physical and intellectual productions so long survive him? The massive piles of Egypt have endured for thousands of years; fluted column and sculptured architrave have stood for generations, monuments of his labor and skill! A poem of Homer, an oration of Cicero, carry down to the remotest posterity the memorial of their names. Men found empires, establish constitutions, promulgate codes of laws. There have been Solons, Justinians, and Napoleons. There have been those justly called Fathers of their country and benefactors of their race. Have they, too, sunk to become clods of the valley? The mind, which can look so far before and after—can subdue to its mastery the savages of the forests, and the fiercer elements of Nature—can stamp the creation of its genius upon the living canvas, or the almost breathing, speaking marble—can marshal the invisible vibrations of air into soul-stirring or soul-subduing music—can pour forth the eloquence of words with magic power to lash the passions of many hearts into a raging whirlwind, or command them with a 'peace, be still'—can make a book, a little book, which shall outlive pyramids and temples, cities and empires—



can perceive and love beauty, and God, the infinite perfection of moral beauty—no, this mind can never die! Its moral progress must go on in an unending existence, of which its life of fourscore years on earth is scarce the childhood. Let us beware then of raising these objects of ambition, wealth, learning, honor, and influence, worthy though they be, into an undue importance; nor in the too ardent pursuit of what are the only means, lose sight of the great end of our being.”

—George Sharswood,—*‘Professional Ethics,’* pp. 180-2.

### SUGDEN ON POWERS

“Sugden on ‘Powers’ has been said to be second to no elementary law book.”—*Said by Judge Sharswood.*

### NO ROYAL ROAD TO LAW

“One thing is certain,—there is no royal road to law, any more than there is to geometry. The fruits of study cannot be gathered without its toil. It seems, to be the order of Providence, that there should be nothing really valuable in the world not gained by labor, pain, care or anxiety. In the law, a young man must be the architect of his own character as well as his own fortune.”—*From, ‘Advice to Lawyers.’*

### READ BIOGRAPHIES OF EMINENT LAWYERS

“It is well to read carefully and frequently the biographies of eminent lawyers. It is good to rise from the perusal of the studies and labors, the trials and conflicts, the difficulties and triumphs, of such men, in the actual battle of life, with a secret feeling of dissatisfaction with ourselves. Such a sadness in the bosom of a young student is like the tears of Thucydides, when he heard Heroditus read his history of the Olympic Games, and received the plaudits of assembled Greece. It is the natural prelude to severer self-denial, to more assiduous study, to more self-sustaining confidence.”—*‘Legal Ethics’.*

### THE COMMON LAW—A RIVER

“The common law is not a straight canal cut by the art of civil engineers, but a mighty river, its head lost in the sands of antiquity, which has sought and made its own channel, and that the most natural and best, though occasionally requiring to be improved by legislative dams and embankments.”—*From Sharswood’s ‘Introduction to Blackstone’s Commentaries.’*

### MORALITY IN LAW

“There is, perhaps, no profession, after that of the sacred ministry, in which a high-toned morality is more imperatively necessary than that of the law. \* \* \* High moral principle is the lawyer’s only safe guide; the only torch to light his way amidst darkness and obstruction. It is like the spear of the guardian of Paradise.

‘No falshood can endure  
Touch of celestial temper, but returns  
Of force to its own likeness’.”

—*‘Legal Ethics,’*



## THOS A. SHERWOOD (1834-1918), Missouri

### CHRISTIANITY AND COMMON LAW

(After quoting Thos. Jefferson Reports, Vol. 3, Virginia Decisions [appendix], and the Bishop of Lincoln case [an English case,] C. B. 34, H. 6 fo. 38, and Prisot's argument therein, in which Jefferson says:—"Thus we find this string of authorities, when examined to be the beginning, all hanging on the same hook; a perverted expression of Prisot's; or on nothing. For they all quote Prisot, or one another, or nobody.") Then says:—

"After persuing it, no wonder is felt that its author should say of the ruling therein condemned that Christianity is a part of the laws of England, is 'the most remarkable instance of judicial legislation that has ever occurred in English jurisprudence, or perhaps any other.

"To those who devoutly believe that the Founder of the Christian religion is divine; a faith that has survived the wreck of empires, and the vortices of revolution, and continues sure and steadfast, even unto this day, no adventitious aids, and least of all fraudulent aids, are necessary to corroborate or confirm them in that faith.

"Section 7 of Art. 2, of our Constitution prohibitively provides 'that no preference shall be given to nor any discrimination made, against, any church, sect or creed of religion, or, any form of religious faith or worship.' This excerpt, as well as others, which might be selected show with absolute conclusiveness, that a complete separation between Church and State has been accomplished or recognized by the *religionless* instrument.

"Consequent to its terms, the State is required to occupy the position of an *impartial arbiter*, merely, giving no preference to, and making no discrimination against any form or expression of religious faith and preventing either one of a multitude of diverse faiths from interfering with or intruding upon each other, and likewise preventing them from intruding upon unbelievers, and *vice versa*. Upon this theory it is that Sunday laws, as commonly called, are passed and upheld. As Judge Scott very pertinently says in *State v. Ambs*, 20 Mo. Loc. Cit. 218:—"The Sunday law was not intended to compel people to go to church, or to perform a religious act, as an expression of preference for any particular creed or sect, but was designed to coerce a cessation from labor that those, who conscientiously believed that the day was set apart for the worship of God, *might not be disturbed in the performance of their religious duties.*"

"The words marking the dominant thought of the above extract, have been italicized as a basis for further observation. Under the view thus expressed, the evident theory of the Sunday law is the simple prevention of the disturbance of those on that day, in the performance of their religious duties, who conscientiously believe that day was set apart for the worship of God.

"The prevention and punishment of crimes and vices by restrictive and punitive legislation is a conceded legislative power and function which may find enforcement as well on Sunday as on every other day in the week; but it would seem that the legislative power would not embrace the authority to punish for the mere playing of cards on Sunday, no disturbance being caused thereby to those who worship and keep holy that day. And especially should this view obtain in this State under section 5 of our Bill of Rights, which declares:—"That no human authority can control or interfere with the rights of conscience." In *St. L. Agr'l and Mech. Ass'n. v. Delano*, 108 Mo., 217, it was determined that section 3854 (now sec. 2242)—which forbids 'horse-racing, cock-fighting, or playing at cards or games of any kind,



on the first day of the week commonly called Sunday,' and provides that such person thus offending, shall be deemed 'guilty of a misdemeanor,' etc., does not extend to the prohibition of mere *athletic sports*. And it was there said that 'these prohibitions are evidently leveled against sports and games that have a *demoralizing tendency*, and do not extend to mere athletic sports.'

"The ruling in *ex parte Neet*, 157 Mo., 527, follows the same line of thought and theory in holding that baseball does not fall under the ban of the quoted section, for the reason heretofore given. In *State v. Keller*, 53 Mo. App. 32, the validity of the statute was assumed without *discussion*. Our statutes respecting the observance of Sunday are somewhat singular, *ex. gr.*: they punish those who hunt game or shoot on the first day of the week, commonly called Sunday, while others on the same day may imitate some of the early Apostles, and go afishing, without let, hindrance or punishment. (Sec. 2240.) Does not this discrimination between the huntsman and the fisherman, the shooter of the shot-gun and the shooter of the 'short gig,' rather seem to lean towards a special law by favoring particular persons of a class? And would not the same rule hold under the rulings of our Supreme Court with regard to baseball players; are they not exempted from punishment by the statute, notwithstanding the multifarious noises they make, with their bands of music and their vociferous shoutings, while the quiet players in the homes of some non-gambling game, also, make an unconstitutional discrimination *against the cardplayer and favoring the baseball player*?

"Returning to the point already adverted to: What power does the Legislature possess to forbid the doing of *mere indifferent or neutral* acts? If it be taken as true that the Christian religion is no part of the common law, and if it be taken as true that the Legislature has, under our Constitution no power to give a preference to, nor make a discrimination against any church, sect or creed of religion, etc., how is it possible for the Legislature successfully to prohibit and punish an *indifferent, neutral or colorless* act, which in its performance has no tendency to disturb of the religious duties of others, without overstepping the boundary fixed by our organic law forbidding either preference for, or discrimination against, any sect or creed of religion?

"The Legislature has never yet attempted to prohibit the mere playing of games or cards on *week days*, so that the making of such a game, a crime, if played on *Sunday* certainly tends very strongly to give such prohibition a *religious aspect*; and if so that it was *intended to give a preference to the Christian religion*, seems too clear and obvious for argument; but such preference our Constitution forbids. Why forbid the playing of such a game on Sunday, which disturbs or interferes with no one who observes that day, except for the simple purpose of compelling respect for such day? What is that but upholding certain religious views, and giving preference thereto? It would seem that statute must possess the significance here attributed to it, or else none at all.

"If the Legislature may prohibit and punish a mere game of cards, on Sunday, then no reason is seen why they may not go further and prescribe what people shall or shall not wear or eat on Sunday, or whether they may walk out or drive about on that day. It is here with confidence asserted that under our Constitution, *no such legislative power exists*. But it is not believed that the Legislature intended by section 2242 to punish the mere playing of a game of cards when unaccompanied by gambling incidents. Our Supreme Court, as already indicated, has decided that section 2242 does not apply except to game of a *demoralizing tendency*; such tendency cannot be affirmed of a mere game of cards, as above mentioned. Of this judicial notice will be taken.

"Besides when games, or 'gaming' is spoken of in a statute as indictable, it is to be regarded as convertible with gambling; i. e., staking money on a game involving more or less chance.' (2 What. Crim Law,—



9 ed.—sec. 1465b.) ‘Since in popular language, the words ‘gaming’ and ‘gambling’, do largely if not universally indicate an evil sport, if a statute makes either punishable, the evil form of it is commonly or always presumptively meant; the statute being construed, as legislative acts should be, harmoniously with its manifest purpose and intent.’ (Bishop, Stat. Crim. secs. 858, 860.)

“Moreover, another test if applied to the litigated section will lead to a like result as above indicated; words when associated together, give meaning to each other. Horse-racing and cock-fighting, especially if occurring on Sunday, are presumptively sports of an evil, or immoral nature, and ‘playing at cards,’ being associated with the former words, will take their legal complexion from such words, and held likewise to mean an evil sport, to-wit, gambling; as Lord Bacon hath it, ‘*Copulatio verborum indicat acceptionem in eodem sensu*’.” (McNichol v. U. S. Merchants, Rep. Agency, 74. Mo. 463.)

—In “*Commentaries on the Criminal Law of Mo.*” pp. 827-32—  
Written in Springfield, Mo. 1907.

Thomas A. Sherwood, who was born June 2, 1834, at Eatonton, Georgia, graduated in law in 1857 at the Cincinnati, Ohio, Law School; soon after moved to Springfield, Missouri. Elected to the Missouri Supreme Court, 1872, 82 and 92, where he served thirty years—a longer continuous term than was vouchsafed to any other judge on that bench. Moved in 1904 to Pasadena, California, where he died Nov. 11, 1918.

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#### BURKE'S EULOGY ON SHERIDAN'S SPEECH IN PROSECUTION OF WARREN HASTINGS

“Mr. Sheridan has this day surprised the thousands, who hung with rapture on his accents, by such an array of talents, such an exhibition of capacity, such a display of powers, as are unparalleled in the annals of oratory; a display that reflected the highest honor upon himself, lustre upon letters, renown upon parliament, glory upon the country. Of all species of rhetoric, of every kind of eloquence that has been witnessed or recorded, either in ancient or modern times; whatever the acuteness of the bar, the dignity of the senate, the solidity of the judgment-seat, and the sacred morality of the pulpit have hitherto furnished; nothing has surpassed, nothing has equaled what we have this day heard in Westminster Hall. No holy religion, no sage, no statesman, no orator, no man of any literary description whatever, has come up, in the one instance, to the pure sentiments of morality, or in the other to that of variety of knowledge, force of imagination, property and vivacity of illusion, beauty and elegance of diction, strength and copiousness of style, pathos and sublimity of conception, to which we have this day listened with ardor and admiration. From poetry up to eloquence there is not a species of composition of which a complete and perfect specimen might not, from that single speech, be culled and collected.”



## LEMUEL SHAW (1781-1861), Massachusetts

### LAW MUST BE PRACTICED

"Law is an art as well as a science. Whilst it has its foundation in a broad and comprehensive morality, and in profound and exact science, to be adapted to actual use, in controlling and regulating the concerns of social life, it must have its artistic skill, which can only be acquired by habitual practice in courts of justice. A man may be a laborious student, have an inquiring and discriminating mind, and have all the advantage which a library of the best books can afford, and yet without attendance on courts and the means and facilities which practice affords, he would be little prepared, either to try questions of fact or argue questions of law."

He was one of the greatest judges America has produced. Leaving a practice of \$20,000 a year, after 26 years' practice, he was appointed by Governor Lincoln, at the request of Daniel Webster, Chief Justice of the Supreme Court of Massachusetts, which position he held for 30 years. "No subject was so great as to be beyond the reach of his comprehensive grasp; no distinction so minute as to elude his discriminating observation," said Judge Bigelow.

### SHAW AND PARSONS, APPOINTED FROM BAR

"Judge Shaw and Judge Parsons were the only Chief Justices of Massachusetts, from the Revolution to the present, appointed directly from the bar."—*Jos. Henry Beale, Jr's 'Lemuel Shaw,' —3 Gt. Am. Lawyers, 417.*

### SHAW'S OBJECTIONS TO SERVICE AS CHIEF JUSTICE OF MASSACHUSETTS

"Whether I shall accept the appointment as Judge:

"Against it:—

"I shall in some measure sacrifice ease and independence; it will be more laborious. I shall lose something in part of present emolument. I shall be more absent from my family at a time when my children might benefit by my presence. I shall miss the opportunity of traveling, of making tours and journeys, and be confined to the pale of the commonwealth.

"In favor:—

"Although I shall have a good deal of labor I do not know that it is more irksome—in many respects it is less so — than that of the bar. There will be considerable intervals of leisure. Although the emolument will not be so great as that which I have been receiving, yet it is more regular, permanent and secure. At fifty, the labors of the bar begin to become irksome, and many a man who has in early life enjoyed a full practice is apt to decline after that period. The situation is a highly honorable and useful one, which, if the duties of it are ably and acceptably discharged, will lay the foundation of an honorable, lasting name. The above 'if' is with me the great cause of apprehension and alarm. Upon this, I confess I am influenced more by the judgment of others than by my own. I am conscious that I cannot thus discharge the duties; they assure me that I can. I have only one consolation, that I have often thought the same in regard to other arduous undertakings, and yet upon trial have found my strength equal to the occasion. If I undertake this great office, God grant it may be so here."

—*Jos. Henry Beale, Jr's 'Lemuel Shaw', 3 Gt. Am. Lawyers, 470-1.*



## CHIEF JUSTICE BIGELOW'S TRIBUTE

"It was not learning, or study, or research which especially distinguished him (Shaw) as judge. Others have possessed these qualities to an equal degree. His pre-eminence was mainly due to his initiative and comprehensive knowledge and appreciation of those great unchangeable principles of justice and right which lie at the foundation and form the basis of the common law."

(Bigelow was Shaw's predecessor on the Supreme Bench of Massachusetts).

## CHIEF JUSTICE SHAW ON CHOATE

"In the case of Mr. Choate, it was considered quite indispensable that he should reside in Cambridge, on account of the influence which his genial manners, his habitual presence, and the force of his character, would be likely to exert over the young men, drawn from every part of the United States to listen to his instructions."

—*Said by Shaw, as member of the Corporate Board of Harvard, in 1847, in urging Mr. Choate as the successor to Judge Jos. Story, as Professor of Law in the Harvard Law School.*

## PURCHAS' PILGRIMS

When Judge Shaw on behalf of Harvard College took possession of Mr. Dowse's library, at Cambridgeport, which was presented by Mr. Dowse, the latter handed him a book which happened to be 'Purchas' Pilgrims.'

"Ah," said the Chief Justice, "Now, Mr. Dowse, we have this not by gift but by purchase (Purchas)."

—*Willard's 'Half Century with Judges and Lawyers,' 132.*

## KNEW NOTHING ABOUT THE CASE

Chief Justice Shaw was one day calling the docket, and came to a case in which Major Cobb appeared. The Major was busy talking with some one and the Chief Justice said—

"Mr. Cobb, what shall be done with your case?"

"I beg your pardon," said Cobb, "but the name of the case escaped me."

The Chief Justice called the name of the case again.

Cobb: "My name may appear there, your Honor, but really I don't know anything about the case."

Shaw: "I didn't *suppose* you knew anything about the case; I only asked you what you would have done with it."

—*Willard's 'Half Century,' etc., 131.*

## WANTED QUIET

The Chief Justice upon opening Court liked to have quiet reign, and everybody seated, when he would proceed to business, always calling the docket himself. The Crier had a mumbling voice, so that a person could scarcely tell when he ended his proclamation. Mr. D. A. Simmons, a lawyer, who was very impulsive, rushed up one morning, rather short of breath, before the Crier had finished his proclamation, and said:

"Please, your Honor, I wish to make a motion-er-er-to amend er-er-the case of er-er."

"There is one amendment you can make without a motion," said the Chief Justice, "your manners, Sir."—*Willard's Half Century, etc., 130.*



## BEN BUTLER AND JUDGE SHAW

A case was called by Judge Shaw, in which General Butler appeared for plaintiff.

"Does anyone answer for the plaintiff?" said the Chief Justice. No one answered.

"Call the plaintiff," said the Chief Justice. As the Crier began calling, Mr. Butler, who had been quietly sitting in the Court-room, said:

"May it please your Honor, I think this case is not in a condition to be thus summarily disposed of."

"Why not, Sir," said the Chief Justice.

Mr. Butler: "I argued the case a year and a half ago before your Honor, and have been waiting for an opinion."

Chief Justice: "Pass it, Mr. Clerk."—*Willard's 'Half-Century,' etc. 131.*

## RUFUS CHOATE'S REVERENCE FOR SHAW

"Stevenson, the sculptor," says Matt. H. Carpenter, in a letter to Hon. J. Neilson, author of the memoirs of Rufus Choate, "told me that while he was engaged in carving a lion of exaggerated size, and engaged on the head and mane, Mr. Choate took the liveliest interest in the work, calling every morning as he came down, and every evening on his way home, to mark his progress. Stevenson, being curious, asked Mr. Choate why that work interested him so much, "Why," said Choate, "that is the best likeness of Chief Justice Shaw that I ever saw."

—*Neilson's Memoirs of Rufus Choate, 297.*

## BEN BUTLER FEARED SHAW AND GOD ALMIGHTY

It is said General Benj. F. Butler once declared:—

"There are only two individuals in the world that I fear—one is Chief Justice Shaw, and the other, God Almighty."

—*'Leading in Law and Curious in Court,' Sec. 183, by Benj. F. Burnham, (1896).*

## BUTLER'S OPINION OF SHAW

"Lemuel Shaw was the most learned and the ablest Judge in the State of Massachusetts."—*Butler's Book, 1001.*

## GEORGE TICKNOR CURTIS' ESTIMATE

"It has been my fortune, in the course of professional life of more than forty years, to practice before some very distinguished judges. But I cannot mention the name of Chief Justice Shaw without saying that, in all the qualities which make a great magistrate—in strength of intellect, in depth of mental vision, in comprehensive grasp of every question, however difficult, that came before him, in application to it of the appropriate learning, and in the unquestioned and unquestionable poise in which he held the scales of Justice, until one or the other ought to predominate, I have known no man who was his superior. Chief Justice Marshall I never saw; Chancellor Kent, I never saw upon the bench, although I once met him in private life. But, when I name Taney, Story, Nelson, and Curtis, as among the judges before whom it has been more or less my lot to appear, and recall many others of deserved distinction in different States, of whom I have had personal observation, it will, perhaps, be allowed that my estimate of Shaw as a judge, unimportant as it is to his fame, has not been formed without sufficient opportunities of comparison with men of note and mark. There have doubtless been judges who would be called more learned, or possessed more learning



in special departments of the law; but no one ever knew Chief Justice Shaw to fail in the knowledge and application of whatever law was necessary to the decision of the cause on which he had to act. It is true that he was aided by a learned bar, whose presentation of their cases was habitually thorough. But after all has been done that learned advocates can do, it is the office of the judge to select, to weigh, to compare, and not unfrequently, before the law can be declared, to make researches which counsel have not made, or to draw distinctions which they have not drawn. The opinions of this eminent person have always been received by the Courts of other States of this Union, and in the Federal Courts, with a respect that have not been less than phenomenal, and that have not been accorded to those of any judge who has held a place in the judicial history of any part of the country."

—1 *R. B. Curtis' Memoirs, note by Geo. T. Curtis, 69.*

### WEBSTER ON SHAW'S HEALTH AND WORK

"Judge Shaw can do the work of ten, and at night eat ham enough to raise the market price at Cincinnati."

—*Willard's 'Half Century,' etc., 134.*

### THE OFFICER ONLY "CALLED"

A distinguished man died, and the adjutant-general ordered out a certain regiment. The colonel called the men to their quarters to parade on the occasion, and procured a band. The leader could not get his pay, and Mr. Cobb brought suit against the colonel. After Major Cobb had opened his case, the Chief Justice said:—

"Mr. Cobb, how can this action be maintained?"

"On the ground that he who danced must pay the fiddler."

"Who danced here, sir; colonel?"

"Oh no, sir, he only called."—*'Half Century,' etc., by Willard, 135.*

### AN IMITATOR OF CHOATE

Many years ago a young man who was quite ambitious to display his oratorical powers, endeavored to imitate Choate, argued a case before Judge Shaw. He had in one hand the statutes, while the other was behind his back, underneath the skirts of his coat. In this position, he shouted among other bursts of eloquence:—"Look at the statutes, your Honor, look at the statutes." "Look at them yourself, sir," was the gruff reply of the Chief Justice.—*Willard's 'Half Century,' etc., 136.*

### SHAW'S IDEAL LAWYER

"It is not the profession that adorns the man, but the man the profession."

### LITERATURE

"Literature, in my opinion, is almost the only resort of a man who wishes to render his employments independent of others."

—*Said by Shaw, soon after leaving college.*

### HIS CLASSMATES AT COLLEGE

Shaw entered Harvard, in the fall of 1796, and was of the class of 1800, in which were Washington Allston, of South Carolina; Joseph S. Buckminster, the epileptic young Boston preacher; Joshua Bates, afterwards President of Middlebury College, Vt., and Loammi Baldwin, an engineer



of ability whose monuments are found at Charlestown, Massachusetts, and Norfolk, Va., and whose name is perpetuated by discovering the 'Baldwin' apple. In his second college year, Shaw taught school for \$16.00 per month and board.—*F. H. Chase's Life of Shaw*, 18-20.

#### ASSISTANT EDITOR OF "GAZETTE"

Shaw assisted his uncle, Dr. Hayward, a minister at Barnstable, and the latter persuaded him to become a lawyer. David Everett, a young lawyer assisted on the Gazette, and wrote:—

"You'd scarce expect one of my age  
To speak in public on the stage,  
And if I chance to fall below  
Demosthenes or Cicero,  
Don't view me with a critic's eye,  
But pass my imperfections by."

(Everett wrote several plays, and finally moved to Marietta, O., where he died in 1813. Thos. O. Selfridge, an older lawyer, in whose office Everett practiced, was also a contributor to the "Gazette". Selfridge was afterwards charged with murder, and defended by Samuel Dexter with great ability.)—*Life*, 36.

#### SEVEN YEARS APPRENTICESHIP IN LAW

It took seven years before one could be admitted to full practice of the law, in Shaw's youth.

#### MAJOR MELVILLE—THE ORIGINAL OF "LAST LEAF"

Major Melville, of the Boston "Tea-Party," of 1774, is the original of O. W. Holmes's "Last Leaf." He was a leader of the Continental Army, and later surveyor of the port of Boston. He persisted until his death in 1832 in wearing the old-fashioned hat and knee-breeches, and was called,—*"the last of the cocked hats."* He inspired Oliver Wendell Holmes' poem,—*"The Last Leaf,"* and the author said of him:

"His aspect among the crowds of a later generation reminded me of a withered leaf which has held to its stem through the storms of autumn and winter, and finds itself still clinging to its bough while the new growths of spring are bursting their buds and spreading their foliage all around it," and so he wrote:

"I know it is a sin for me to sit and grin at him here:  
But the old three-cornered hat and the breeches, and all that  
are so queer!"

Shaw was engaged to Melville's daughter, Nancy, whom he never married because of her untimely death; but Shaw did not marry until thirty-seven. The Melville family and his were again united by the marriage of Shaw's daughter Elizabeth to Herman Melville, a grandson of the Major, in 1847.—*F. H. Chase's Life of Shaw*, 47-6.

#### JUDGE JAMES PRESCOTT'S IMPEACHMENT

Judge Prescott was judge of Probate for the County of Middlesex, and was charged with fifteen acts of misconduct, extending over as many years. It was alleged in several instances, that he held court in his law-office; that he had demanded and received fees greater than those allowed by statute. In other instances, he was charged with acting as counsel in matters likely to come before him as judge, and with giving



advice to litigants in cases pending in his court, receiving fees or pay for his services, and afterwards allowing his fees, in the account of the executor to whom the advice was given.

Prescott answered, practically admitting all the facts set forth in the articles. But justified the same. The impeachment was before the Senate, the upper branch of the Massachusetts legislature. Shaw was appointed one of the managers to conduct the case. Daniel Webster and Hoar appeared as senior counsel for Judge Prescott. The trial began on Apr, 17, 1821, in Boston. There was little contest over the facts. Respondent's main defense, was his claim that the fees were for services of the court, for which no amount was established by law, for which, therefore, it was proper to receive reasonable compensation. In support they sought to show that such a custom prevailed in the other counties of the State, was in existence when Judge Prescott took office, and had been followed by him in good faith. Shaw objected to this testimony, contending that other similar wrongs could not make Judge Prescott's acts right, and that the only question was whether the fees taken were illegal. Webster replied that, although this might be so in an action to recover the fees, yet the articles of impeachment charged moral turpitude and corrupt motives, and it was clearly competent, to rebut that charge by showing what the practice had been. He cited cases from the Supreme Court of Massachusetts, the impeachment cases of Judge Chase, Warren Hastings, Lord Melville, and Lord Chancellor Macclesfield, in support. The Senate barred the inquiry, deciding the question by a silent vote. This brought upon them the thunder of Webster's wrath. Webster's argument that it was more troublesome and laborious for Prescott to perform private duties at his office than in ordinary court, and thus an extra fee for that service was warranted, Shaw met this as follows:—

“Where is the doctrine to stop, and to what corruption and abuses would it not lead! A judge possesses large discretionary powers, in other cases, to which, if correct, the same reasoning would apply. He may adjourn at such time as he thinks expedient. Supposing the first day after opening court, in a remote part of the county, where there is a press of business, he should think fit to adjourn, on the ground that his private business required his attention. Might he lawfully receive a large sum of money of the suitors, to induce him to exercise his discretionary power and continue his court? In short, if business of the special courts, is to be paid for liberally, and upon a scale of what the judge might think reasonable for extra time and attention, and business at regular courts of probate is paid for according to the humble standard of the fee-bill, would it not soon be in the power of the judge to render the transacted business in the latter courts, without regard to the enhanced expense? If a judge of probate may sell his discretion, and turn his judicial power to profit, why may not the same thing be done by the judges of common law courts? It is no answer to say that they are paid by salaries, and not by fees. They are bound to do their duty, and they have an equal right to say that they will do no more without compensation. They, too, have large discretionary powers, and by adjournment may hold sessions at such times and places as the public good requires. Suppose an individual suitor, having an important cause, depending upon the decision of a question of law before the judges of the Supreme Court, should pay them a fee to induce them to hold an extraordinary session for his accommodation. It would be no apology to say that such individual could well afford to pay the extra sum, that in fact, it would be for his advantage to pay it, rather than wait the delay of the ordinary course of business. Such a transaction, it is quite manifest, would fix a stigma upon the administration of justice, and the most assiduous discharge of official duty, could not obliterate it.

“We have no earnest invocation to make to the Judges of this honorable Court, except that they will examine the case now submitted to them,



without fear, favor, affection, prejudice or partiality, and pronounce their decision, not according to the momentary impulses of sympathy and compassion, but upon the invariable dictates of judgment and reason.

"If sensibility should usurp the seat of justice, and take the place of the understanding and judgment, laws would be unavailing, and all civil and social rights become fluctuating and uncertain. Justice might throw away her balance, for it would be useless, and her sword, for it would be mischievous. If punishment and disgrace are to overtake the respondent, it is because punishment and disgrace are the natural, the necessary and the inevitable consequences of turpitude and crime. The Representatives of the people of this Commonwealth, demand at your hands no sacrifice of innocence; they ask for no victim of their resentment, for they have none to gratify. If applying the evidence to the law of this case, this Court can consistently with the conclusions of enlightened and inflexible judgment, pronounce the respondent innocent, these representatives will rejoice to find that the reputation of this Commonwealth still remains pure and unspotted. But if these conclusions should be otherwise, if this Court is satisfied that the respondent has abused the powers entrusted to him, disregarded the rights of others, and violated his high official duties, the representatives of the people do earnestly hope, and confidently trust, that this high Court, disregarding all consequences personal to the respondent, will pronounce such judgment on his conduct as will prove a salutary example to all others in authority, vindicate the honor and secure the rights of this Commonwealth, and enable them to transmit to posterity that unblemished reputation for purity, honesty and integrity in the administration of justice which has hitherto been the ornament and glory of Massachusetts."

—*Judge Prescott was convicted upon two of the articles of impeachment, and he was removed from office. Shaw's Life, pp. 46 and 100-2.*

### A REASONABLE DOUBT

"Then, what is a reasonable doubt? It is a term often used, probably pretty well understood, but not easily defined. It is not a mere possible doubt; because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of the proof is on the prosecutor. All the presumptions of law, independent of evidence, are in favor of innocence; and every person is presumed to be innocent until he is proved guilty. If upon such proof there be reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding, and satisfies the reason and judgment, of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law should go further than this, and require absolute certainty, as it mostly depends upon considerations of a moral nature, it would exclude circumstantial evidence altogether."

—*Charge in Prof. Webster's case, for murder. Life of Shaw, 202. Case was tried in Boston, 1850.*



## THERON METCALF

Theron Metcalf was a student of a meticulous character, involving painstaking research and comparison rather than anything in the nature of constructive work or interpretation. Metcalf was appointed with Prof. Asabel Sterns, of the Harvard Law School and Shaw, commissioners in 1822, to revise and superintend the publication of the laws. Metcalf was the editor of English reports and numerous text-books, a frequent contributor to legal publications, and later published an important work on Contracts, and became a reporter in 1835 of the decisions of the Massachusetts Supreme Court; later he was appointed as Associate Justice of the bench with Judge Shaw, where he served for seventeen years.—*Shaw's Life*, 108-9.

## GEO. S. HILLARD'S RETORT

"When it was proposed by Benj. F. Butler, to legislate Judge Shaw off the bench, in 1853, because the judge was severe in dealings with counsel. This action took place in the Constitutional Convention. Hillard in commending Judge Shaw, and alluding to the actions of Butler and his followers, said:

"While we have jackals and hyeans at the bar, we want the old lion upon the bench, that with one blow of his huge paw can pull thier scalps over their eyes."

Butler was no favorite with the court, as he was well aware, although he claimed to bear the Judge no ill will, as he says in his book, that Shaw was the most learned and the ablest judge in the State, and was of the finest qualities of heart and head.—*Shaw's Life*, 283.

## RUFUS CHOATE'S TRIBUTE TO SHAW

"Do not reply hastily," said Choate to his associate in a trial at Springfield, Mass., who was about to reply in anger to a suggestion of the Chief Justice. "Remember that with him, and under him, life, liberty and property are safe." At another time, when looking at a portrait of Sir Matthew Hale, Choate remarked: "A very great judge, Hale was but not greater, I think, than the Chief."—*Shaw's Life*, 289.

## SHAW ON OUR DEBT TO ENGLAND

"The commercial and intellectual intercourse, which, with liberal views, we maintain with England, may be of the most beneficial and interesting nature arising from the community of origin and language. From her we have derived our laws, learning, taste, literature and science, our principles of government and our love of liberty."—*Life of Shaw*, 210.

## AGAINST A HIGH TARIFF

"It is an abuse of the power of Congress to impose duties for revenue, when it is carried to such extremes as to prohibit imports, and consequently lessen our export trade, destroy revenue, burden one part of the nation with heavy taxes for the benefit of another, which we claim constitutes the wrong, and which we contend is neither in accordance with the spirit nor letter of a constitution which was intended to guarantee equal rights, as well as equal burdens to all who live under it."

—Said by Judge Shaw, in a memorial to Congress, in 1828.

"No more powerful statement," said Geo. F. Hoar, "of the argument against high protection can be found."



## COMMONWEALTH VS. AVES

In this case, decided in 1836, Judge Shaw freed by habeas corpus a colored girl named Med who had been brought to Massachusetts by her mistress, who was visiting relatives in the North. When she was about to return to the South, taking with her the slave, the process of the court was invoked to determine the girl's status under the laws of the State. Shaw's decision was based upon the grounds that slavery was contrary to natural right and could not exist in Massachusetts. He held that 'an owner of a slave in another State where slavery is warranted by law, voluntarily bringing such slave into this State, had no authority to detain him against his will, or to carry him out of the State against his consent, for the purpose of being held in slavery.' In this case Rufus Choate and Ellis G. Loring appeared as counsel for the Commonwealth, and C. P. Curtis and Benj. R. Curtis argued that the right of property in the colored girl had been lost. The latter, Curtis, was later appointed a Justice of the Supreme Court of the U. S., in 1851, and there delivered his famous dissenting opinion in the Dred Scott case. In that opinion Judge Curtis cites and follows the opinion in Commonwealth vs. Aves. Over the opinion in the Dred Scott case, arose the controversy between Chief Justice Taney and Justice Curtis, which probably helped to influence the latter soon afterwards to resign from the bench. After the opinion of the Chief Justice had been read in consultation and in open court, Judge Curtis prepared and read his dissenting opinion, and subsequently permitted it to be published. The Chief Justice, however, contrary to the rules of his court, did not file his opinion with the Clerk, but withheld it, and made material additions thereto, so Curtis claimed. The Clerk received orders from the Chief Justice that nobody should receive a copy of the opinion, which was subsequently filed, until it was published by the Reporter. The Clerk, following this order, refused to send a copy of the Chief Justice's opinion to Curtis upon his request. Then ensued a lengthy and increasingly bitter correspondence between the colleagues. These letters are set forth, in full, in George Ticknor Curtis' *Memoir of Benj. R. Curtis*.—*Life of Shaw*, 164-5.

## BUTLER FEARED SHAW AND GOD ALMIGHTY

It is said General Benjamin F. Butler once declared: "There are only two individuals in the world that I fear, one is Chief Justice Shaw and the other is God Almighty."

Butler was asked once where he was taking an immense mastiff which he had in leash. "Down to the Supreme Court," was the reply. "I thought I would show him the Chief Justice so as to teach him how to growl."

In the Constitutional Convention of 1853, Butler in his attack upon the Chief Justice, spoke of his severity in dealing with counsel. George S. Hillard, a brilliant and accomplished lawyer, met the criticism with this retort: "While we have jackals and hyenas at the bar, we want the old lion on the bench, with one blow of his huge paw to bring their scalps over their eyes."—*F. H. Chase's 'Lemuel Shaw'*, 283.



LESLIE M. SHAW (1848- ), Iowa

### PREPAREDNESS

"Shall the United States encourage its business to extend to other countries, particularly those in South America; and when war comes ask American traders to come home and leave the industries they have built to be taken without resistance by a foe? There isn't a business man in the country who will not say no to that proposition. Yet, to avoid doing that very thing we must have an army and a navy adequate to defend our interests over the entire earth.

"If I had my way, and there were nothing to hinder me, I would build the most powerful navy in the world and would mobilize a standing army of a million men, all in the next six months. Then we would be secure. Not only that, but so equipped the U. S. could prepare terms of peace and have them signed by all the European belligerents.

"Were we powerful on the sea and possessed a great army we could simply say to England, 'Here are peace terms. Sign on that dotted line, please.' We could say the same to Germany, and to France and Austria. As we are, we can suggest only to the belligerents, as to fighting boys, 'It is wicked to fight.' God never intended the U. S. should be a little power, whose influence should be restricted to its own territory. The U. S. will be a great influence in the politics of the world, but to attain that it must have the force on land and sea to make its voice heard and carry weight."

—*Leslie M. Shaw, Iowa (1848- ), Governor of Iowa, 1908-1912; Sec. of Treasurer under Theo. Roosevelt, 1902-1907.*

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### WM. M. EVART'S TRIBUTE TO HERBERT SPENCER

"In theology, in psychology, in natural science, in the knowledge of man and his exposition, and in a knowledge of the world, in the proper sense of society, which makes the world; the world worth knowing, the world worth speaking of, the world worth planning for, the world worth working for, we acknowledge your labors, Mr. Spencer, as surpassing those of any of our kind. \* \* \* The faculty of laying on a dissecting board an entire nation or an entire age and finding out all the arteries and veins and pulsations of their life is an extension beyond any that our medical schools afford. You give us that knowledge of man which is practical and useful and whatever the claims of the doctrine may be about your system or the system of those who agree with you, and however it may be compared with other competing systems that have preceded it, we must all agree that it is practical, that it is benevolent, that it is serious, and that it is reverent; that it aims at the highest results in virtue; that it treats evil, not as eternal, but as evenescent, and that expects to arrive at what is sought through the aid of the millennium, that condition of affairs in which there is the highest morality and the greatest happiness. And if we can come to that by these processes and these instructions, it matters little to the race whether it be called scientific morality or mathematical freedom or by another less pretentious name."

—*Wm. M. Evarts, at Dinner given Herbert Spencer, in N. Y. City, Nov. 9, 1882, before his return to England.*



## SAMUEL SHELLABARGER (1817-1896), District of Columbia

### THE JUDICIARY OF A COUNTRY

"The character of a judiciary of a country is so obviously the reflection of the character of its civilization that we utter mere truisms when we say that the greatness of every State is measured by the learning and purity of its judiciary; and that the happiness, the liberty and the virtue of every people are best studied in its courts. In these sanctuaries of the law it is that, even in decaying states, liberty and order take their last refuge, and here die."—*Remarks in the U. S. Supreme Court, upon the death of Chief Justice Wait, 1888.*

### CHIEF JUSTICE HOLT

"Soon after Coke, came one who fills, by reason of his mere judicial character and work, the largest space in the history of the English law that is occupied by any of England's illustrious judges. He is one who gave England a new and a real civilization. This was Chief Justice Holt. Of him it is truly said that he gave splendor to all the after-coming luminaries of the English bench, and that he is the model upon which, in England, great judicial character has been formed for the last and best two hundred years of English history."—*In same address.*

Concerning Shellabarger's speech in the 37th Congress on the lawfulness of the suspension of the writ of habeas corpus by Mr. Lincoln, in the absence of Congressional authority, Jas. G. Blaine says: "For conciseness, consistency and strength it has rarely, if ever, been surpassed. It may be doubted whether any speech in the House ever made a more enduring impression, or exerted greater convincing power upon the minds of those to whom it was addressed."

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### INCIDENTS IN O'CONNELL'S LIFE

He was but half an inch under six feet in height; mouth and lower part of his face beautifully shaped; nose was short; eyes keen blue; was habitually careless about money, \$250,000 were subscribed for him in 1829, after his passing of the Emancipation Act; by will he directed that his heart should be removed from his body (he died in Genoa, Italy, on his way to Rome) and be buried at Rome; fell desperately in love, just before his imprisonment, though nearly seventy years of age, with a girl hardly out of her teens, an English woman and a Protestant, who persistently refused to marry him; for twenty-five years of his life, rose soon after four, lighted his own fire, and was always seated at business at five, and retired invariably at 9:45; his favorite sport was hare-hunting with beagles among the hills, and his pack was famous all over Ireland; had a superb voice, full as a bell, of wide compass and great power.

—*Author.*



## ELLIOT F. SHEPARD, New York

### RULES OF LEGAL SUCCESS

"To attain eminence as a lawyer it is necessary to:

"1. Get a thorough education.

"2. Follow this after graduating from college by continued study, especially in constitutional law.

"3. Become familiar with the practice and procedure of the courts.

"4. In giving advice to clients a lawyer should always put himself in the place of his client and then ask, What should I, A. B., do in such a case? And whatever he sees to be for the interest of himself in such a case, that is the course he should advise his client to pursue.

"5. Never make or oppose a motion simply for the purpose of getting costs.

"6. Cultivate clear enunciation in speaking and the habit of thinking on the feet. Put a vein of good humor constantly through all arguments, all examinations and cross-examinations of witnesses and every summing up. The law is a sedate mistress and loves to be tickled, and whenever a lawyer can get the old lady to laugh he is sure of having won his case.

"7. The lawyer's meditative moments should be given to the contemplation of the vast interests that are dependent upon the law for their protection, and all the methods by which that protection can be most effectively rendered.

"8. The lawyer's clientele is the whole country; not merely the particular client in a particular case, or any client in any case or his clients in all his cases. It is impossible for a lawyer to stand for an interest, affecting almost everybody in the community at large, and every lawyer ought to argue every case as if feeling the responsibility of this greater clientage which his arguments continually affect and make either worse or better.

"9. The lawyer ought to consider his argument in advance, and put himself in the place of the judge, and honestly say to himself what considerations ought to operate in my mind if I were judge, for deciding this case in my favor. And then he should chiefly enforce before the judge those very considerations. So the lawyer has to put himself in the case of the other men twice over—once in the place of his client and once in the place of the judge; and by this expansion of his habit of thought he will grow to such a condition that he will almost invariably bring the judge and his client to stand upon the same platform of principles, thus securing a favorable decision for his client and the confidence of the judge.

"10. A lawyer who will practice upon these principles may occasionally lose a case, but will never lose a client; and the number of his clients will constantly increase and the importance of the interests intrusted to him constantly grow."



MORRIS SHEPPARD (1875- ), Texas

CONTRIBUTIONS OF THE HEBREW TO HUMAN  
ADVANCEMENT

"Never have the versatility and value of the Hebraic genius been more brilliantly demonstrated than in the last one hundred years. In politics we find Lasalle breathing German social democracy into existence and rivalling Bismarck. We find Lasker, the author-statesman, inaugurating the German Liberal party and leading it in the Reichstag. We find Bamberger the economist-historian, assisting in the formation of modern Germany. We find Mannheimer, president of the Austrian Diet, and Trier, the speaker of the Danish House of Commons. In Turkey we find Pasha, a vice-admiral of the Imperial Navy, and his brother the First Dragoman of the Imperial Palace. In Italy we find Maurogonato among the foremost senators and lawyers; Luzzati, a conspicuous member of various cabinets; Wollemborg, Victor Emanuel's first minister of finance; Artom, the illustrious diplomat, the friend and counselor of Cavour. In France we find Benavrides, one of the highest magistrates; Cremieux, a famous minister and legislator; Fouled four times a minister of finance under Louis Napoleon; Gambetta, a defender of human rights; See, a champion of woman's education. In England we find Disraeli rising from the humblest surroundings to become for twenty-five years one of the most powerful figures of the world, and Lord Herschell, twice Lord High Chancellor, under Galdstone. In the United States, we find Judah P. Benjamin, declining a Supreme Judgeship, on account of his immense private practice, representing Louisiana with rare ability in the federal Senate, serving in the cabinet of the Confederacy, and after the failure of the Southern Cause reaching England, with shattered fortune, at the age of fifty-one, to become a leader of the English bar and to write a work on the law of sales that ranks as permanent authority. Benjamin once appeared against Webster in the United States Supreme Court; Webster occupied three hours. Then came Benjamin, physically small and insignificant, who spoke in a thin, low voice for twenty minutes, when the Chief Justice whispered to one of his colleagues: 'Great heavens, that little man has stated Webster out of court in twenty minutes!' We find Isador Rayner, the worthy successor of Benjamin, in the present U. S. Senate. In the National House of Representatives we find our own Goldfogle, Meyer, Littauer and Kahn. We find Franklin Moses, Chief Justice of the Supreme Court of California, and Newberger, Cohen, Leventritt, Greenbaum, Steckler, and others on the bench in New York. In other avenues we find the modern Jew pre-eminent.

"In poetry, we may point to Drachmann, whom competent critics have ranked with Tennyson and Byron; in fiction to Arbach, to Burnstein, and to Zangwill; in dramatic literature to Klein, Milland, Halevy, Schlesinger, Von Weilen, Rosenfield, Belasco and Martha Morton; in dramatic art to Sonmenthal, the idol of Vienna, to Barney Braham, Rachel and to Bernhardt, the 'queen of attitude'; in song to Lucca, Calve, Lehman, Melba, Patti, Sembrich and Marcella; in music to Mendelssohn, grandson of the great philosopher, Meyerbeer, Strauss, the Damrosches, Rubenstein, and Hoffman; in painting to Israels, Solomon J. Solomon, Ulmann, Meyerheim, Lazaur and Ben Austrian; in Sculpture to Ezekiel and Autokalski; in writers of history to Edersheim, Herzberg, Rowanin and Geiger; in political economy to Ricardo, Mark, LaSalle and to Bloch; in criminology to Lombroso and Max Nordau; in mathematics to Sylvester, who with Cayler, founded modern higher algebra; in explora-



tion to Emin Pasha; in astronomy to the Herschels, to Goldshmidt, who discovered fourteen asteroids and thousands of new stars, and to Beer, who has been called the first cartographer of the moon; in medicine to Koller, discoverer of cocaine, to Virchow and Koch, the renowned specialists in tuberculosis; in botany to Cohn and Pringsheim, who are among the first botanists of Germany; in finance to the Rothschilds, who perfected modern finance and popularized national loans; to Poliakoff and Pereres, the great Russian and French railway owners; in journalism to Pulitzer, to Rosewater and Ochs; in diplomacy to Oscar Strauss and Solomon Hirsch; in charity to Montifiore, to Baron and Baroness de Hirsch, Schiff, Nathan Strauss and Mrs. Esther Hermann.

"It may seem by this all too brief enumeration how few of these great names are connected with finance. The Jewish people retain in all its original vigor the spirituality of old Israel. They are still devoted to the things of the spirit, and scholarship, philosophy, art, in fact all intellectual studies are still their favorite and fundamental form of energy. Let it be said to civilization's shame that of the eleven million Jews in the world more than half this number are still subjected in Russia and Roumania to the infamous restrictions and oppressions of the Dark Ages.

"In this brief and necessarily incomplete discussion I have tried to outline the principal contributions of the Jewish people to human advancement. A complete description of their achievements would involve a review of the history of almost every important nation both of the present and the past, and the world itself. They have been patriotic in the countries of their exile and adoption and cosmopolitan in almost every age. In the great transition periods, in the movements for human elevation they have played fundamental parts. They have been the messengers of an idealism from which have flowed purity in religion, loftiness in morals, equality in society, and majesty in law. In philosophy, science, literature, finance, in general culture, in domestic virtue, in patriotism and philanthropy, they have been world pioneers, world counselors. In the preservation of their identity, vitality and refinement through centuries of cruelty and oppression they have established an example which will give new strength and hope to inhumanity's victims everywhere. Recalling their marvelous record, a record fairly glittering with blessings for mankind, it seems unthinkable that death and torture and exclusion should have been their fortune through so many ages and that today they suffer the most ferocious and inexorable discriminations in Eastern Europe. This last condition is the foulest stain on our civilization, the darkest indictment of our time. If Protestants were wronged in Eastern Europe as are the Jews, and I, a Protestant, make the assertion, protests would be thundered from the leading powers and peoples of the earth, protests which unheeded would be re-enforced with battleships.

"How proud the heritage of the Jewish young men and women! How inspiring the task which confronts them! With that purity and culture must they fill their souls and lives in order to keep unfurled and spotless the banners of the spirit! With what courage must they defend the principles of equality and justice; with what devotion must they take up the cause of their bleeding brethren of the Russian and Roumanian captivities! May they continue to promote with every energy the welfare of the respective nations of their allegiance, to spread the teachings and ideals of intellectual and political freedom, of fraternity among republics and empires as well as men and thus bring nearer to humanity the realization of Isaiah's dream of universal peace."

—*Morris Sheppard, U. S. Senator from Texas. From address before the Young Men's and Women's Culture Society of Temple Redeph Sholon, N. Y. City, April 25, 1906.*



## JOHN SHERMAN (1823-1900), Ohio

### TARIFF

"The strength of our country depends upon the diversity of our industries, upon our ability to supply at home all the chief wants of our people, that therefore we ought not only to grow food, but to manufacture fabrics of iron, wool, cotton, wood and of other mineral and textile material of which we have a raw supply, and that this policy can be best advanced by a reasonable tax of the foreign article, which will not only yield us revenue, but will give our home labor the advantage in competition with the poorly paid labor of foreign countries. To this, it is answered, that the consumer pays the tax not only on the article imported, but on the article manufactured. This may be true to a certain extent in the beginning, but the incidental benefit of the tax, by diversifying industry, is so generally distributed as to be equalized by all classes, and experience shows that domestic competition in a little while reduces the cost of the home article to what the foreign article would have been without the tax."

—John Sherman, at Wooster, O., 1881.

### THE CURRENCY QUESTION

■ "It is idle for us to try to discuss with intelligence the currency question until we are impressed with the truth, the universality and the immutability of this axiom, that is that a specie standard is the best and the only true standard of all values, recognized as such by all civilized nations of our generation, and established as such by the experience of all commercial nations that have existed from the earliest period of recorded time. Many of the crude ideas now advanced spring from ignoring it. The most ingenious sophistries are answered by it. It is the governing principle of finance. It is proved by experience, is stated clearly by every leading writer on political economy, and is now here in our own country proving its truth by measuring daily the value of our currency and of all we have to produce. I might, to establish the axiom, repeat the history of finance, from the shekels of silver, 'current money with the merchant,' paid by Abraham, to the last sale of stock in New York. \* \* \* Neither governments, nor parliaments, nor congresses can change this law."

—From John Sherman's speech, Jan., 1874, in U. S. Senate: Sherman's 'Recollections of Forty Years', 419.

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## JOHN H. FLANIGAN OVER THE GRAVE OF ALBERT CAHN

"The manly man sees God, not in the earthquake nor in the whirlwind, but traces His finger in the orbits of the planets; he learns of Him, not from books or men, but in the seed which reproduces its kind after resting for centuries in Egyptian tombs.

"Spring, resplendent, bursting from the loins of dead Winter, sounds the bugle call of the resurrection; the returning birds sing of the new, the better life.

"The whisper of the trembling leaves is freighted with their breath, Who sleep beneath the grassy eaves their sweetest sleep in death."

"Yea, God is good, good, good."

"He who lies here, dead, had such a God; not one of frowns and wrath, but one of infinite love and gentleness. Such a God he loved, not feared; such a one he met, I doubt not, unabashed and unafraid. And I, as his friend, have no fears of the judgment of this godly God upon this manly man."—Remarks at Carthage, Mo., Feb. 21, 1912.



## JEREMIAH SMITH (1759-1842), New Hampshire

### LAW AND POLITICS

"In all my experience, I have never known politics to confer law knowledge or professional distinction, but have known law knowledge to elevate the political man. The road to law is not through politics, but aside, apart from it. It takes away, but never gives. On the subject of politics, it is material to state, that they unfit the mind for science of any sort, certainly for the severe science of law, logic, or mathematics. As managed with us, they whet and brighten some of the faculties, invention, imagination, knowledge of men and things, the talent of diversifying, describing, abusing an adversary, etc., but unfavorable to accuracy of thinking, talking, writing, speaking. In State squabbles a little knowledge, loose and general, is better than a great deal of sound and correct knowledge and information."—*Morison's Life of Jeremiah Smith*, 262-3.

### BUTLER'S ANALOGY

"Everybody should read Bishop Butler's Analogy once a year till he can understand it, and once a year afterwards to enjoy it. You talk of the wealth of the Church of England, but if all the revenues of the See of Durham from the Conquest were accumulated in one vast sum, the whole would be of less value than that inestimable work."

—*John H. Morison's Life of Smith* p. 503.

### JUSTICE NOT FORM

"If the world should be pleased to speak of me after I am dead, let them say he was a judge who never permitted justice to be strangled in the nets of form."—*Morison's Life*, p. 177.

### HOW TO GROW RICH

"The way to grow rich is not by earnings, but by careful keeping, and prudent spending."—*Morison's Life of*, 490.

### LABOR VS. LEARNING

"Depend upon it, that vulgar thing called labor, pains, care and diligence, gives better security for success in the world, indeed, for the acquisition for everything good, than ability and learning."

—*Morison's Life of*, 488.

### LESSON FROM PHILOSOPHY

"The liability to pain and injury proves how entirely the human body is formed with reference to the mind, and to a state of trial and discipline; since, without the continued call to exertion, which danger and the uncertainty of life infer, the development of our faculties would be imperfect, and the mind would remain, as it were, uneducated. It is one thing to make a machine for the purposes of the body only and another to make a machine for a body with a mind and soul. Weakness and liability to injury, therefore, imply no imperfections in the frame of our bodies. A deep contemplation of the subject will evince the incomparable per-



fection both of the plan and execution. The body was intended by our all-wise, all-good and merciful Creator to be subject to derangement and accident, and to become in the course of life more and more fragile, until, by some failure in the frame-work or vital action, life terminates. That the soul may live, this tabernacle of clay must be dissolved and perish."

—*Morison's Life of*, 367.

### SMITH HAD A MIND OF HIS OWN

"One thing I must confess, I have now in my old age, less deference for the opinion of others than I had in earlier life; not that I think better of my own wisdom, but less of others; I do not think of myself, but for myself."—*Life of Morison*, 450.

### REBUKE TO THE WITNESS DEARBORN

In a cause which Judge Smith was to argue, a man by the name of Haines was an important witness on the opposite side, and many witnesses had been introduced to show that no reliance could be placed upon his testimony. In opposition to these witnesses, one Truevorthy Gove Dearborn, a man of some little consequence, testified that Haines was a man to be relied upon. Mr. Smith in his argument, speaking of the strong evidence against Haines' character, concluded by saying, "All who have ever known him testify in the most decided manner that he is not to be trusted, except Truevorthy Gove Dearborn, a man just like him." This was spoken in the most contemptuous manner, and as if the witness were utterly untrustworthy of notice, not a word was added. Mr. Dearborn, as was natural enough, was exceedingly angry, and, determined to be revenged, went to Mr. Smith's lodging, and told him that he should bear such insult and abuse from no man, however elevated his position. Mr. Smith, with a most good-humored and comic expression, replied, "What did I say? You testified that Haines was a man of excellent character, and I said that you were just like him."

—*Morison's Life of*, 280-1.

Smith had been four terms in Congress, judge of the U. S. Circuit Court, chief justice of the Superior Court for 7 years; then governor of the State, and then chief justice of the Supreme Court for 3 years; was of Scotch-Irish stock; possessed of great natural abilities; but like Mason, he was no orator; was with Mason and Webster for plaintiff, Sullivan and Bartlett for defense in the Dartmouth College causes. Mr. Webster has been heard so say, that having practiced in many courts, from that of justice of the peace, where he began, up to that of John Marshall, at Washington, he had never found a judge before whom it was more pleasant and satisfactory to transact business than it was before Chief Justice Smith; that he had known as judge none who was more quick in his perceptions, more ready with all ordinary learning, or possessing more power to make a complicated case appear plain to a jury, more perspicuous. He added with Chief Justice Smith, industry in preparation on the part of counsel, reasearch into the points of law, and a frank and manly presentment of the whole case, placing it upon its true merits, without disguise or concealment, would go as far for the maintenance of truth and justice, as with any judge he had ever known. And added Webster: "Smith knows more about law than I do or ever will."



## EDWIN M. STANTON (1814-1869), Ohio

### ADULTERY

"When a man has obtained such a power over another man's wife that he can not only entice her from her husband's house, but separate her from her child, for the purpose of guilt, it shows that by some means he has acquired such an unholy mastery over that woman's body and soul that there is no chance of saving her while he lives, and the only hope of her salvation is that God's swift vengeance shall overtake him. The sacred glow of well-placed domestic affection, no man knows better than your Honor, grows brighter and brighter as the years advance, and the faithful couple whose hands were joined in holy wedlock in the morning of youth find their hearts drawn closer to each other as they descend the hill of life to sleep together at its foot; but lawless love is short-lived as it is criminal, and the neighbor's wife so hotly pursued, by trampling down every human feeling and divine law, is speedily supplanted by the object of some fresher lust, and then the wretched victim is sure to be soon cast off into common prostitution, and swept through a miserable life and a horrible death to the gates of hell, unless a husband's arm shall save her. Who seeing this thing would not exclaim to the unhappy husband: 'Hasten, hasten, hasten to save the mother of your child. Although she be lost as a wife, rescue her from the horrid adulterer; and may the Lord who watches over the home and family guide the bullet and direct the stroke!'"

—*Extract from Stanton's argument to the Court, upon the law, in defense of Daniel E. Sickles, for the murder of Phillip Barton Key, Washington, D. C., 1859.*

### THE AGONY OF A CUCKOLD

"What agony is equal to his who knows not whether the children gathered around his board are his own offspring or an adulterous brood, hatched in his bed?"—*Extract from the Sickles defense.*

### GOD IS ON OUR SIDE

"Surely God is on our side, for we have done what we could to ruin ourselves, and we have failed to do it."

—*Said by Stanton, after the fight with President Andrew Jackson.*

### SUMNER'S FAMOUS LETTER TO STANTON

"Stick, C. S.," (Charles Sumner), Mr. Sumner wrote Stanton from the Senate when President Johnson was trying to remove him from the office of Secretary of War. This letter, after Mr. Sumner's death, sold for a large sum in New York City.

### BEECHER ON STANTON'S TENDERNESS

"Stanton was as tender as a woman—he was as tender as a lover. I had great admiration for him. Being told by a friend just from Washington, in 1865, that Stanton was breaking down, I walked into a Wall street office, and wrote to him just what I had heard—that he was sick and broken down and desponding; that he need not despond, that the country was saved, and that if he did not do another thing he had



done enough. I sent the letter, and in the course of a few days I got back a letter, and if it had been a woman writing in answer to a proposal, it would not have been more tender. And when I went to Washington he treated me with great tenderness, as if I had been his son. He evidently got rest from his great cares through literature, as Lincoln did from the humorists. I understood them both perfectly."

—Henry Ward Beecher—*'Reminiscences of Abraham Lincoln,'* 252.

### CRIED WHEN LINCOLN DIED

"When told at the bedside of the dying Lincoln, by Surgeon General Barnes that the President could not live till morning, Stanton exclaimed: 'Oh, no, General; no, no;' and with an impulse, natural as it was unaffected, sat down and wept like a child, and said the next morning after his decease, 'He belongs to the Ages!'" —*Our First Century*, 891.

### Dictated the Terms of Peace, 1865

"Just before Lincoln's inauguration, March 3, 1865, a dispatch arrived from General Grant, suggesting that terms with Lee, who had asked for an interview to negotiate peace. Mr. Lincoln was greatly inclined to permit his General-in-Chief to effect this negotiation. Stanton, who was present, and who kept silent while the discussion was going on, at length spoke out sternly: 'Mr. President, tomorrow is inauguration day. If you are not to be President of an obedient and united people you had better not be inaugurated. Your work is already done, if any other authority than yours is for one moment to be recognized, or any terms made that do not signify that you are the supreme head of the Nation; if generals in the field are to negotiate peace, or any other chief magistrate is to be acknowledged on this continent, then you are not needed, and you had better not take the oath of office.' 'Stanton, you are right,' said the President, his whole tone changing, 'let me have a pen.' And Mr. Lincoln at once wrote as follows to General Grant for the Secretary of War to sign: 'The President directs me to say to you that he wishes you to have no conference with General Lee, unless it be for the capitulation of Lee's army or some minor or purely military matter. He instructs me to say that you are not to decide, discuss, or confer upon any political question. Such questions the President holds in his own hands, and will submit them to no military conference or convention. In the meantime you are to press to the utmost your military advantages.'"

—*2nd Nat'l Cyc. of American Biography*, Article, 'Stanton,' 84.

### STANTON AND LINCOLN IN McCORMICK REAPER CASE

"Mr. Lincoln, Mr. Stanton and George Harding were associated as counsel in the celebrated reaper patent case, *McCormick v. Manney*, 6 McLean, 539, tried in Cincinnati, Ohio, in the United States Circuit Court, though they had not met before the trial. It is related on the one hand, that Lincoln was senior counsel, and that when the hearing came on, Stanton, undervaluing Lincoln's character and standing as a lawyer, with unprofessional assurance, grasped the role of making the argument on the law points, to which, as junior counsel, he had no claim under the custom of the bar, that as the Court would hear only two lawyers on a side, and as a review of the mechanical questions were specially confided to Mr. Harding, this arrangement deprived Mr. Lincoln, and to his disappointment, of the opportunity of speaking before a prominent Court and a new and distinguished auditory. On the other hand, we are distinctly informed, by one of the clients in the suit that Mr. Lincoln was the junior counsel, and Mr. Stanton and Mr. Harding had made so



much longer and more elaborate preparations that the clients themselves determined their selection to make the arguments; that therefore, Mr. Lincoln's displacement arose from no unfairness of anyone, but simply from the fact that the Court had limited the number of speeches."

—5 *Nicolay and Hay's Life of Lincoln*, 133-4.

Mr. Lamon, in his *Life of Lincoln*, 322, and Herndon, in his *Life of Lincoln*, 355, both sustain the first theory. The former was a fellow-member of the bar with Lincoln, and the latter his partner for many years. Mr. Herndon also says that upon this occasion, Mr. Stanton described Lincoln as a "long, lank creature from Illinois, wearing a dirty linen duster of a coat, on the back of which the perspiration had splotted stains that resembled a map of the continent."

L. E. Crittenden, in the June, 1894, *Green Bag*, relates that the case was appealed to the U. S. Supreme Court, and both Stanton and Lincoln prepared briefs, and when Stanton read Lincoln's brief he tore his up and insisted upon Lincoln's arguing the case in that Court, which he did, and won a great victory.

John T. Richards, in his "*Lincoln, the Lawyer-Statesman*" (1916), pages 82-3, says:

"When Mr. Lincoln reached the hotel, Stanton and Harding were absent and Mr. Lincoln awaited their return. He stood at the entrance to the hotel as they approached and was greeted indifferently as they passed by him and went to the room of Mr. Harding. How they knew Mr. Lincoln Mr. Harding did not say, but on arriving at his room a conference was had between the two lawyers, and Mr. Stanton insisted that it would never do to allow a man of Mr. Lincoln's type to make an argument in the case. Mr. Harding described Mr. Lincoln as awkward and ungainly in appearance, his clothes utterly devoid of the tailor's art, ill-fitting and in no wise suited to his angular frame. He wore heavy boots and his appearance was that of the average western farmer of that period. Having determined that Mr. Lincoln should not be allowed to participate in the hearing of the case, Harding and Stanton sought a method to bring about the desired result, and it was finally determined to send for Mr. Lincoln and inform him that as there were but two counsel on the opposite side of the case, they had decided that it would be unwise that more than two arguments should be made on behalf of the defendants. It was agreed that Mr. Harding should be the spokesman when Mr. Lincoln came, and upon his arrival at the room of Mr. Harding, the latter informed him of the conclusion which had been reached and told him that he (Harding) would make the argument on the technical questions regarding the infringement and that the other argument would be made by Mr. Stanton. Mr. Lincoln replied, 'Very well, gentlemen, I have here some suggestions which I had intended to use in my argument which you are at liberty to use if you see fit,' at the same time taking a manuscript from the inside pocket of his coat and handing it to Mr. Harding. Shortly thereafter Mr. Lincoln left the room and Mr. Harding threw the manuscript into the waste-basket without opening it."

—E. N. Dickerson, of Philadelphia, a noted patent lawyer, and Reverdy Johnson, the famous Baltimore lawyer, represented the claimant, McCormick; and George Harding, the famous patent lawyer, of Philadelphia, Edward M. Stanton, and Abraham Lincoln, represented Manny, the defendant. The case was *McCormick v. Manny*, tried in Cincinnati, in 1855. See also Tarbell's '*Life of Lincoln*,' Vol. 2, 54.

## THE DEBT THIS COUNTRY OWES STANTON

"In 1862 the country was in peril from which it could only be extricated by a Secretary of War with the fierce determination and patriotism of



Edwin M. Stanton. Mr. Lincoln knew his man, and while members of his Cabinet were hesitating, doubting, fearing, he made Mr. Stanton Secretary of War, and Mr. Stanton made himself the greatest war minister of the century. The country is beginning to find out, and another generation which is able to read history without prejudice, will know how great a debt the country owes to Edwin M. Stanton."

—*L. E. Chittenden, June, 1894, Green Bag, 268.*

### "LINCOLN IS A D——D FOOL"—INCIDENT

"A committee of Western men, headed by Mr. Lovejoy, procured from President Lincoln an important order looking to the exchange of Eastern and Western soldiers, with a view to more effective work. Repairing to the office of the Secretary, Mr. Lovejoy explained the scheme, as he had done before to the President, but he was met by a flat refusal.

"'But we have the President's order, sir,' said Lovejoy.

"'Did Lincoln give you an order of that kind?' said Stanton.

"'He did, sir.'

"'Then he is a d——d fool,' said the irate Secretary.

"'Do you mean to say the President is a d——d fool?' asked Lovejoy, in amazement.

"'Yes, sir, if he gave you such an order as that.'

"The bewildered congressman from Illinois betook himself at once to the President, and related the result of his conference.

"'Did Stanton say I was a d——d fool?' asked Lincoln, at the close of the recital.

"'He did, sir, and repeated it.'

"After a moment's pause, and looking up, the President said: 'If he said I was a d——d fool, then I must be one, for he is nearly always right, and generally says what he means. I will step over and see him.'"

—*George B. Julian, 'Reminiscences of Abraham Lincoln, 56.*

### THE HIGHEST AND ONLY RELIGION

"God, in all His communications with man, clothed his language in the highest imagery. All light and all color that make life beautiful are the affair of a little nerve God has endowed us with to enjoy His precious gifts that after all live only in our brain. This principle, I maintain, runs through all, and the highest religion, if not the only religion, is in a true appreciation of God's works. Thus we work our way through Nature up to Nature's God." Written by Stanton, in boyhood, which he wrote at intervals snatched from less agreeable studies.

—*Don Piatts, Men Who Saved the Union, 52.*

### THE WHEELING BRIDGE CASE

"In the December term of 1850 the struggle for supremacy between the steamboats and the railroads came to the front, in the great case of *Pennsylvania v. Wheeling Bridge Co.* (9 Howard, 647), argued by Stanton against Reverdy Johnson, 'with a degree of ability and learning worthy of the palmiest days of the Old Bar of the Supreme Court.' It was held that the bridge was an obstruction to commerce, and also a nuisance as an infringement on the common law rights of the State of Pennsylvania."

—*Warren's 'History of the American Bar,' 439.*

### JOHN T. MORSE, JR. ON STANTON

"No one liked him (Stanton) living; scarcely anyone has wished to say much of him dead. An advocate biographer has, indeed, presented a sort of a brief for him, and Mr. Rhodes, kindest of historians, has



mentioned his virtues; for, in fact, he had virtues; devotion to the cause, a very greed for hard work, financial integrity, a merciless energy against the rascal contractors. But it cannot be forgotten that he had the odious faults of a bully; he was violent and insolent, but only when violence and insolence was safe; he was supposed to be personally timid; he could be mean and unjust; above all he repeatedly outraged the magnanimous forbearance of Mr. Lincoln, in a way in which no American can forgive. Substantially every writer's pen is against him; or, at least, no writer's pen is for him. Mr. Welles rends and tears him without mercy. \* \* \* The two men, after a few tentative feints and clashes, had inevitably to try out their comparative strength in a conclusive bout. It took place, and thereafter Mr. Stanton rarely ventured into Mr. Welles' path."

• —*From Morse's Introduction to the Diary of Gideon Welles, Vol. 1, p. XXXI.*

Welles in his diary says Stanton was dishonest, vol. 1, 127; that he was mercurial, arbitrary and apprehensive, violent and fearful, rough and impulsive, yet possessed of ability and energy. vol. 2, 309.

### STANTON ON THE GETTYSBURG SPEECH

"I remember very well going into Stanton's room in the War Department on the day of the Gettysburg celebration, and he said, 'Have you seen these Gettysburg speeches?' 'No,' said I; 'I didn't know you had them.' He said, 'Yes; and the people will be delighted with them. Edward Everett's is the speech of a scholar, polished to the last possibility. It is elegant and it is learned; but Lincoln's speech will be read by a thousand men where one reads Everett's, and it will be remembered as long as anybody's speeches are remembered who speaks the English language.' That was the truth. If you will compare these two speeches now you will get an idea how superior that intellectual faculty is, which sees the vitality of a question, and knows how to state it; how superior that intellectual faculty is which regards everything with the fire of earnestness in the soul, with the relentless purpose of a heart devoted to objects beyond literature."

—*Chas. A. Dana, in lecture, 'Lincoln and His Cabinet.'*

### STANTON'S PLACE IN THE WAR

"Stanton's was the master mind of the War. To his indomitable will and iron nature we owe all that we accomplished in that direction.\* \* \* He had his defects but no weaknesses. His very sins had a fierce strength in them that helped on instead of retarding his work. He could crush a personal enemy under the iron heel of his military power, but the men he favored, such as Hooker, Pope, and Thomas, were eminently fitted for the task assigned them. \* \* \* He finished his great work, resigned his commission of office and his life, at the same instant, for he staggered from his department on the arm of Death. The accumulation of an independence, accomplished through long years of trial at the bar, disappeared during his term of service, and he left the office a poor man. The monument to Lincoln has not yet been built. When it is, the column that holds aloft the form of our greatest man of that trying period should have supported the base, four bronze figures of Chase, Seward, Stanton and Thomas. And so will history, in the hearts of the people, group those to whom we owe our existence as a Nation."

—*Don Piatts, 'Men Who Saved the Union,' 92-4.*

### JOHN W. FORNEY'S TESTIMONY

"A close student, a clear, compact logician, a bold impetuous advocate, his best powers were given to his profession. Sought after far and near,



and employed in most of the great cases, his reputation and large influence in his native State of Ohio and his adopted State of Pennsylvania assumed national proportions when he removed to the City of Washington. He towered in the Supreme Court, a leader of leaders. An authority of wide acceptance, he was a genius of his school."—*Jno. W. Forney's*

*'Anecdotes of Public Men,' Vol. 1, 184.*

#### JAS. SCHOULER'S DESCRIPTION OF STANTON

"Stanton was of moderate height, burly and thickset. His large head was decked with a mass of black hair, and a long and heavy black beard. His dark eyes darted through the glasses of thin-rimmed spectacles, with a quick and searching glance. His movements, like his thoughts, were rapid and alert; and his absorption in the immediate work and his energy in prosecuting it seemed almost superhuman in intensity. He would work at his desk late at night, while a carriage waited outside to take him home. Robust in health and less than fifty years of age when he first took Cameron's place, four years of prodigious toil utterly wrecked him, and he died prematurely. A natural tendency to cerebral excitement increased greatly under the exhausting pressure of his cares and the novel sense of power. He firmly believed that the Lord directed the cause he was serving, yet his nature was not buoyant on the whole, and he dwelt less upon what had been done well than upon what might have been done better. Parsimonious of praise, he did not spare harsh censure. Stanton was blunt, and often offensively so, rude of speech, and lacking much in suavity and delicacy of feeling; but sincerity or preoccupation accounted much for it. He had strong passions, strong antipathies towards those who would not work with him. When he once disliked a man the desire swelled in his heart to get rid of him; and as no friendship could be strong to overcome his sense of public duty, rancor would set in whenever one who had lost his confidence resisted. Above all else he wanted men uncorrupt in public dealings, and where he suspected fraud, he would watch his prey like a basilisk, with venomous imagination, imparting to others his suspicion before the proofs were ready. It has been said that while Lincoln never fully trusted any man, Stanton trusted no man; yet the Secretary had his likings, was even genial and kind in his best moods, showing tenderness of feeling. But sycophancy he detested, and praise put him instantly on his guard. He had quick intelligence, and, valuing his time, comprehended all he cared for before half was told him. This made his judgment swift and often too hasty; and a caller who did not speak clearly and briefly might be impatiently and even rudely interrupted. Congressmen and the patronage brokers found him a difficult man to deal with. He stood sternly at his desk at the hour for visitors, and when the whole throng were ushered in compelled each applicant, high or low, to state audibly his request, which a stenographer at his elbow recorded together with his rough answer. He was too strained to be of judicial temper, and once deciding a point refused to reconsider. Great virtues were thus hedged in among glaring faults; and though wholly without thirst for popularity, he made himself more unpopular than he might have done. Enemies will spring up like weeds, while friends are made and kept only by watchful effort."

—6 *Schouler's Hist. U. S.*, 160-1.



## ALEXANDER H. STEPHENS (1812-1883), Georgia

### WILLIAM A. TRENT'S ESTIMATE

"Stephens was probably the ablest constitutional lawyer of his section."  
—*'Southern Statesmen,'* 247.

### HIS HISTORY OF THE WAR

"Stephens was occupied for nearly four years writing a history of the war, completing the same in 1870. It is unquestionably the ablest exposition and defense of the Southern cause that has yet been made by any participant in the stirring events it describes, and it is written in an admirable temper. It is deficient just where Mr. Stephens' own statesmanship was deficient, it argues constitutional questions from the point of view of the lawyer rather than from that of the historian, a procedure not without precedent in the North. \* \* \* It is a book that will be read with respect, in spite of its dialogue form, by every serious student of American history; and it always will be a monument to its author's fine qualities of heart and head."—*Trent's 'Southern Statesmen,'* 250-1.

### A TOUCHING STORY

Stephens, in an address delivered in 1840, at a meeting in Alexandria, Va., for the benefit of the Orphan Asylum and Free School of that city, related the following anecdote:

"A poor little boy on a cold night in June, with no home or roof to shelter his head, no paternal or maternal guardian or guide to protect or direct him on his way, reached at night-fall the house of a rich planter, who took him in and fed, lodged and sent him on his way with his blessing. Those kind attentions cheered his heart and inspired him with fresh courage to battle with the obstacles of life. Years rolled round, Providence led him on; he had reached the legal profession; his host had died; the cormorants that prey upon the substance of man had formed a conspiracy to get from the widow her estates. She went for the nearest counsel to commit her cause to him, and that counsel proved to be the orphan boy who years before was welcomed and entertained by her deceased husband. The stimulus of a warm and tenacious gratitude was now added to the ordinary motives connected with the profession. He undertook her cause with a will, not easily to be resisted; he gained it; the widow's estates were secured to her in perpetuity;" and Mr. Stephens added, with an emphasis of emotion that sent its electric thrill throughout the house, "That orphan boy now stands before you."

### LINCOLN ON STEPHENS

Under date of February 2, 1848, from the House of Representatives, while serving as member of Congress, Lincoln wrote this short note to Herndon, his law partner, at Springfield, Ill.:

"Dear William: I take up my pen to tell you that Mr. Stephens, of Georgia, a little, slim, pale-faced, consumptive man, with a voice like Logan's (Stephen T., not John A.), has just concluded the very best speech, of an hour's length, I ever heard. My old withered, dry eyes (he was not quite 39 years old then) are full of tears yet."

### THE SMALLEST EAR OF CORN, ETC.

At another time, while President, Stephens came to call on Lincoln, at the White House, and Stephens, who weighed less than ninety pounds,



threw off his overcoat. Said Lincoln, looking at the little man, and then the large coat: "That is the smallest ear of corn I ever saw for so large a husk."

### ANDREW JOHNSON'S ORATORY

Stephens, a competent judge, considered Andrew Johnson's speech against secession, the best one made in the Senate during the whole controversy.—*Horace White's Life of Lyman Trumbull*, 246.

### MARY CLEMMER'S DESCRIPTION

"In front of the Speaker's desk (House of Rep.) sits Alex. H. Stephens, that almost disembodied spirit, that will-o'-the-wisp of a patriot, who still persists in staying in the most transparent shell of a body, and bringing it punctually to Congress."—*Written in 1879, 4 years before his decease.*

### THE LAWYER

"No pursuit in life is more honorable or useful than that of the law, when followed as it should be. None requires more rigidly a stout adherence to all the precepts and principles of morality, or the possession and practice of the highest and noblest virtues that elevate and adorn human nature. Not even the office of the holy minister opens up such a wide field for simply doing good to one's fellowman. The lawyer's province is to aid in the administration of justice, to assist the oppressed, to uphold the weak, to contend against the strong, to expose the wrong, to find out deceit and to run down vice and crimes of all grades, shades and characters. What a field is his for calming passions, allaying strife, composing disputes, settling quarrels and quieting contentions.

"A good lawyer is ever a peacemaker. Pettyfoggers there may be whose sole object is to stir up litigation that they may profit by it. The man who enters the bar, with his soul fired by aspirations fitting his high vocation, looks to nothing but the advancement of justice. The tangled web of most private controversies can be better unravelled and straightened by bringing the parties together in private conference than by carrying them into court. This the lawyer, properly imbued with the spirit of his calling, will always strive to effect. Contentions that originate in impulse, passion or misunderstanding, can often in this way, be speedily adjusted and reconciliations brought about. In controversies involving doubting questions of law, in the settlement of estates, the descent of property, construction of wills and conveyances, the judicial forum must be the resort. But with what intense regard for truth, for right and justice, does the lawyer investigate facts and pore over his books, preparing himself for such occasions.

"In the Temple of Justice he glories in the fact that everything is weighed in her scales. Reason and wisdom are his necessary weapons. The materials to be handled are human acts colored with human passions, prejudices and infirmities. What a field here for the exhibition of the noblest virtues in exposing knavery, fraud, villainy and falsehood of every sort, and truth their just reward. The lawyer is brought in contact with men of all characters, the lowest and the vilest, as well as the highest and purest. Hence, his means of acquiring thorough knowledge of human nature are superior to those of all other classes combined. His opportunities, not only for allaying strife, settling quarrels and bringing about reconciliations, but for giving proper rebuke to crime and iniquity, are better and far more numerous than those of the minister of the Gospel. He sits, as it were, in the market-place and on the highways; not a day passes in which he may not, and should not, dispense with a liberal hand the Christian charities of his counsel in the succor of the needy, the destitute, the wronged, the widow and the orphan.



"There should be nothing mean or low about him. He should understand the shifts of fraud, deceit and cunning, in order to be able to circumvent those who deal in these, without ever practicing or countenancing them himself; but, on the contrary, ever possessing and holding them up to condemnation. He should have no ambition but to serve his fellow men and to do good. In doing the greatest possible good to others, he achieves the greatest good for himself."

—*From his Prison Journal, while imprisoned at Ft. Warren, near Boston, Mass., July, 1865.*

### ROBERT TOOMBS

"Toombs is one of the most extraordinary men I have ever known. As a talker, I have never known his equal. As a lawyer, I have never seen his superior before judge or jury. As a legislator in debate, few in the House or Senate ever wished to encounter him; none ever did to win any laurels by it. His mind is very quick and active. Contrary to general opinion, he has always been a close and hard student; but his power of analysis and generalization are so great that he can acquire more in less time than any one I ever saw. In reading the report of a case or an author on any subject, he at once seizes upon the real ideas, gleaning the vital part from the general verbiage by a process rapid as intuition. As a public speaker or 'stump orator', no one in any age or country ever had more power than he, in the days of his prime. He was thoroughly read in local law, in United States history, and in national law. His true greatness did not consist in statesmanship; he was governed too much by passion and impulse. As a lawyer, debater, popular orator, planter, political economist, it would be difficult to find his equal. His superior could not be found in his day."

—*'Prison Journal,' Ft. Warren, Aug. 7, '65.*

### BACON'S ESSAYS

"I am disappointed in Bacon's Essays. They are nothing but loose sayings on divers subjects. They are, in some respects, not unlike Solomon's Proverbs. The best is on 'Friendship;' there is much worth reading in that."—*'Prison Journal,' July 14, '65.*

### PREACHERS, GOD'S VICEGERENTS

"Preachers have less charity and magnanimity than any other class of men. These are qualities for which, as a class, they are not distinguished. There are many exceptions, such as Henry Ward Beecher and others. Still what I have said is true of the average of all sects. So much have I been impressed with this, that I would seldom permit a preacher to sit on a jury for the trial of any person accused of crime, when I was counsel for the defense, if I could help it.

"I once had a pointed talk with a reverend gentleman of my own church, who undertook, in a pious way, to lecture me on the sin of defending criminals. I was engaged in the Richmond Court, in defense of Keener, charged with the murder of Reese, one of the most important criminal cases in which I ever appeared. Excitement against Keener was intense. Little or no sympathy was felt for him in any quarter, and least of all among those professing to follow the teachings of Him, who, in the case of the Syro-Phenician woman, said to those demanding condemnation: 'Let him who is without sin cast the first stone.' Facts clearly showed that the homicide was not murder under the law; that, at most, it was manslaughter, if not perfectly justifiable under the State Code. But the reverend doctor of divinity, wholly incapable of weighing these facts, with the usual blood-thirsty propensity of his calling, demanded to know



if I did not think I was committing a sin in preventing the execution of 'justice?' I replied: 'No. In the first place I do not consider Keener guilty of murder, under the law; the law requires that he should not be so convicted or punished. In the second place, if the facts were different and he were guilty, I should not feel myself a sinner in endeavoring to procure his release. If we all had justice done us, that justice which your view of the facts and the law you are so anxious should be meted out to Keener we should, according to your own teaching, have been in hell long ago. If Christ died to save the guilty from damnation, I do not think I sin in trying to prolong their lives that through grace they may escape hell. Much less do I feel that I commit a sin in trying to save one who is not guilty, even though I oppose a multitude.' This closed our conference. He gave me up, perhaps as a reprobate.

"But I did not abate my exertions for Keener. Such was the feeling against him, inspired by clerical advocates of justice, and others imbued with like ideas, that he was convicted on the first trial; convicted, in part by judicial wrong rulings, to which I took exceptions: the case went to the Supreme Court; a new trial was granted; and Keener was acquitted. The judge and the preachers, as well as the whole tribe of Javerts, were scandalized at the escape of their victim. The old Aztec Priests could not have felt more rage at the escape of one stript and bound for their sacrificial altars, than did these fanatical devotees who wanted human offering made to their idol of human justice. But I rejoiced in the successful performance of such labor and in a result that was nearer approximation than that of their desire to the standard of Divine Justice. If I am ever to be tried for anything, may Heaven deliver me from a jury of preachers! I do not mean to express disrespect to ministers of the Gospel. They have their weaknesses and faults; and their most striking defect is a want of that charity which they, above all men, should not only preach but practice. They are too impressed with the idea that they are God's vicegerents here below, expecially commissioned to deal out His wrath and vengeance."—*From 'Prison Journal,' July 6, 1865.*

#### JEFFERSON DAVIS

"With politicians it is as it is with quacks in medicine; if the patient survives, the great work of cure is claimed to the credit, honor and skill of the doctor who almost killed him in spite of nature; while, if the patient dies from the prescription of the quack, it is all, with due submission and resignation, turned over to the score of Providence. So, I suppose it will be with the Southern States, their cause, their institutions, their ruin, and their leaders. These Southern leaders were certainly short-sighted; they evinced no wise forecast of statesmanship. Mr. Davis, in my opinion, ranks with the rest of them. If he had been a real statesman, he would have opposed secession. \* \* \* Davis's education, of scholarly finish, had come to him without struggle; he was of aristocratic temper and bearing; a West Pointer and a stickler for military form and order. \* \* \* Had he been a statesman, he would have understood the people. They were fighting for rights, not for dynasty. He looked for nothing but independence or separate nationality. \* \* \* It would be difficult to find in the history of the world a man with such resources at his command, who made such poor use of them."

—*From 'Prison Journal.'*

#### STEPHEN'S MAXIMS

" 'The world treats a man very much as he treats it,' or, 'Whoever kicks the world will be apt to be kicked in turn.' This was given me soon after my majority, by a man of experience, while I was chafing under some ill usage. I have repeated it to many young persons since. It



recurs to me often, since I have been here (Ft. Warren Prison), obtruding itself upon the mind as Job's comforters pressed their consolations on him. The inquiry springs up: 'Do you hold to your maxim?' If so; must you not admit that you have acted a very hard part toward the world?' With the firmness of Job, I neither make the admission nor repudiate the maxim. I do know that my acts toward the whole human family have been marked by kindness. In all that I have done, from the beginning of the political troubles which have brought me here, I have been governed solely by a sense of duty to do the most good to my fellowmen that I could, under the circumstances. Personal ambition had no part in anything I have done; nor had prejudice toward the North; I never entertained to them any feeling of unkindness. My earnest desire, from the first, has been that the conflict might end in the speediest way possible for the interest and well-being of both sections of the country, for their advancement in prosperity and happiness, and for the preservation and perpetuation of their constitutional liberty. This, I thought, and still think, would be better effected by maintenance of the principles under which I was reared. They constitute the pole-star of my political life. I am not prepared to admit that I erred in entertaining them, and to govern my conduct accordingly, because I suffer as I do. Why I thus suffer I do not know, but I feel an internal assurance that all will ultimately be right, let the sequel be as it may." (Said by Stephens.)

—'Recollections of A. H. Stephens,' by Myrta Lockett Avery, 145.

## RELIGION

"Nothing more distinctly marks the character of a people than their religion. I believe Virginia was the only colony adopting the Church of England as its established system of worship. This shows the structure of her society, which in various respects followed more closely the English type than did that of any other colony."

—'Recollections of A. H. Stephens,' 420.

## STEPHENS' APPEARANCE IN 1872 IN CONGRESS

"An immense cloak, a high hat, and peering somewhere out of the middle, a thin, pale, sad face. How anything so small and sick and sorrowful could get here all the way from Georgia is a wonder. If he were laid out in a coffin, he needn't look different, only when the fires would have gone out in the burning eyes, set as they are in the wax-white face, they seem to burn and blaze. That he is here at all to offer the counsels of moderation and patriotism proves how invincible is the soul that dwells in this sunken frame. He took the modified oath in his chair, and his friends picked him up in it, and carried him off as if he were a feather."—'A newspaper article,' 'Recollections of Stephens,' 550.

## YOUNG LAWYER'S FIRST CASE

"I am glad to hear you have got a case. This is your first in your new location, and I can not do better than repeat that a young man's first cases at the law are the most important to him he will ever have. His reputation is at stake. It should be a leading object with him to succeed in them beyond expectation. He ought to take no case, except such as he believes, on investigation, to be right."

—Advice to John Stephens, a nephew, when just settled in Atlanta, to practice, in 1872. 'Recollections,' 555.

## NO EXCELLENCE WITHOUT GREAT LABOR

"Nothing great and good can be accomplished without labor and toil. Motion is the law of living nature. Inaction is the symbol of death,



if it is not death itself. The mightiest engines, with strength and capacity sufficient to drive the mightiest ships across the stormy deep, are utterly useless without a moving power. Energy is the steam power, the motive principle of the intellectual capacity. It is the propelling force; and as in physics, momentum is resolvable into velocity and quantity of matter, so in metaphysics, the extent of human accomplishment may be resolved into the degree of intellectual endowment, and the energy with which it is directed. A small body driven by a great force will produce a result equal to, or even greater, than that of a much larger body moved by a considerably less force. So it is with minds. Hence, we often see men of comparatively small capacity, by greater energy alone leave, and justly leave, far behind them in the race for honors distinction and preferment."

### DECISION AND ENERGY

"For success in life, it is essential that there should be a fixedness of purpose as to the object and designs to be attained. There should be a clear conception of the outlines of that character which is to be established. The business of life, in whatever pursuit it may be directed, is a great work. And in this, as in all other undertakings, it is important in the outset to have a clear conception of what is to be done. This is the first thing to be settled: What profession or vocation is to be followed. The only rule for determining this is natural ability and natural aptitude, or suitableness for the particular business selected. The decision in such case, should always be governed by that ideal of character which a man with high aspirations should always form for himself."

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### HAMPTON L. CARSON'S CHARACTERIZATION OF STANLEY MATTHEWS

"In March, 1876, Matthews was elected United States Senator in place of John Sherman, who had resigned to become Secretary of the Treasury, and the following year was promoted to the Supreme Bench. Although strongly opposed in the Senate, because of the views he was supposed to entertain towards corporations, the most eminent of his critics, standing by his bier, had the candor to state that his opinions and his assent to those delivered by other judges upon that class of questions had convinced him as well as other Senators that they were mistaken in doubting his judicial capacity and independence. Upright and candid, a helpful and sympathizing friend of the younger members of the bar, fair and just in logic, rich in legal learning, clear in statement, gentle in disposition, affable in conduct, patient and attentive, he won, during the seven years of his judicial service, the respect of his associates, the confidence of the bar, and gave each year fresh assurance of continued growth and predominance. His death elicited the most eloquent and affectionate eulogies from political opponents as well as friends. His opinions evince research and care, and at times he dissented most vigorously from the doctrines established by the judgment of the majority of the court—the most noticeable instance being in the well-known case of *Kring v. Missouri* (107 U. S., 221, 1882), in which he protested against an extension of the constitutional principle of forbidding *ex post facto* laws as would result in the escape of a convicted murderer, when, as he contended, the substance of the prisoner's defence upon the merits had not been touched; where no vested legal right under the law had wrought a result upon his legal condition before its repeal."

—'History of the Supreme Court of the U. S.' by Hampton L. Carson, (1891), 483-4.



## THADDEUS STEVENS (1793-1868), Pennsylvania

### THADDEUS STEVENS' EPITAPH

"I repose in this quiet and secluded spot, not from any natural preference for solitude, but finding other cemeteries limited by charter rules as to race, I have chosen this that I might illustrate in my death the principles which I advocated through a long life—equality of man before his Creator."

—*Thaddeus Stevens. The Humble Cemetery was chosen because the Aristocratic ones forbid persons of color to be interred therein.*

### CONTEMPT OF COURT

"Do you intend to express your contempt for this Court," said the Judge to Thaddeus Stevens. "Express my contempt for this Court! Why, I was trying to conceal it," replied Stevens.

### A WORLD OF PROGRESS

"What is this world but a world of progress? And what is the statesman worth who is afraid to fight in the front ranks? The liberty of the world is not yet effected. Half the world is yet in chains, half the world is yet under kingly government. We must go ahead, and, though I can do but little, I shall do what I can; and if, when I am dead, there sprouts any vigor from my bones and my grave to help forward posterity, to proclaim the same doctrines of universal liberty and universal suffrage and universal disenthralment from kings, I shall be satisfied. The Goddess of Liberty is represented in ancient statues as a very nice goddess, but very small. I want her to grow, to put on the habiliments of mature age, until she can embrace within her folds every nation and every tribe, and every human being within God's canopy, I care not what you say of radicalism; these are my principles, and with the help of God, I shall die with them. I ask no epitaph, I shall have none; but I shall go with a pure consciousness of having tried to serve the whole human race, and never injured a human being."

### TRIBUTE TO HIS MOTHER

"I really think the greatest pleasure of my life resulted from my ability to give my mother a farm of 250 acres, a dairy of fourteen cows, an occasional bright gold piece, which she loved to deposit on the contributor's box of the Baptist church which she attended. She was an extraordinary woman. I have met very few women like her. My father was not a well-to-do man, and the support and education of the family depended upon her. She worked day and night to educate me. I was feeble and lame in youth, and as I could not work on the farm, she gave me an education. I tried to repay her afterwards, but the debt of a child to his mother, you know, is one of the debts we can never pay."

—*S. W. McCall's Life of Stevens, 89.*

### ESCAPADE AT DARTMOUTH COLLEGE

Stevens graduated from Dartmouth in 1814, and while at college, he and another student killed a trespassing cow, which frequented the college campus. It was laid to an innocent student, who was about to be expelled, as the owner demanded satisfaction. At this juncture, Stevens and his comrade rose to the occasion, and confessed, and the



owner forgave them, refused to expose them or take compensation. Many years afterwards, Stevens sent him a draft for more than the value of the cow, and a gold watch and chain.—*McCall's Life of Stevens*, 17-18.

### TRIED FIFTY MURDER CASES

During his late life, Stevens said he had been counsel for the prisoner in more than fifty murder cases, in all of which but one he had been successful, but that every defendant had deserved conviction, except the one who was hanged. That one he said was insane. He received a \$1500 fee in his first case, the one in which he made the defense of insanity, and lost.—*McCall's Life*, 25-6.

### A SPONTANEOUS JOKER

"He rarely told a story; but two men, perhaps, so entirely different in character as Stevens and Lincoln, never threw off more spontaneous jokes. Stevens was strong in repartee, in retort, in quiet interrogatory. He must have been terrible at the cross-examination of a witness."

—*Forney's Anecdotes of Public Men*, 37.

### APPEARANCE AND DISAPPEARANCE

John Hickman called upon Stevens when upon his deathbed, felt the grip of the grim messenger fastening on him, told the Old Man he was looking well. "Oh, John! it is not my appearance, but my disappearance that troubles me," was his answer.

### MADE A FORTUNE AFTER FIFTY

At the age of fifty years, through the operations of a partner in the iron business, he found himself more than \$200,000 in debt. He retired temporarily from politics, removed from Gettysburg to Lancaster, Pa., where he lived during his professional and political life, a bachelor, as he never married. Alexander Hood, one of nine students in his office at one time, says his debts, in 1843, amounted to \$217,000; in six years he reduced them to \$30,000. In the first session of the Supreme Court of the State, at Harrisburg, he was counsel in four of the six cases which came up from his county: the next year, in six of the eight cases. His practice was from \$12,000 to \$15,000 a year.

### ALEX K. McCLURE'S TESTIMONY

"I have heard and seen all the leading men of the Pennsylvania Bar, who were contemporary with Mr. Stevens, and I regarded him as the most accomplished all round lawyer we had in the State. He was thoroughly grounded in the fundamental principles of the law; was thoroughly familiar with cases, at home and abroad; was perfect in practice, elicited testimony from witnesses better than any man I have ever heard in court, and was one of the most skilful advocates that ever addressed a jury. I was engaged with other counsel against him in the first important case I ever tried after my admission to the bar, and felt much embarrassment in having so accomplished an antagonist; but he was one of the most courteous men in the trial of a case, whether engaged with or against him, and especially to the younger members of the bar that I have ever met. His invective, that was most wisely employed in the trial of cases, was terrible, and the member of the bar who undertook to transcend the line of propriety was certain to pay dearly for his audacity; but he was thoroughly manly and generous to all who merited such treatment.



I have known many of our great lawyers who were great advocates, but he is the only man I recall, who was eminent in all the attributes of a great lawyer."—*From letter, Nov. 15, 1898.*

### NATIONAL BANK NOTES

"To the banks I can see the advantage. They would have the whole benefit of the circulation without interest, and at the same time, would draw interest on the government bond."—*McCall's Life of Stevens, 94.*

### THE THINGS EXPRESSED IN THE CONSTITUTION

"If nothing could be done by Congress except what is enumerated in the Constitution, the government could not live a week."

### CHAIRMAN OF WAYS AND MEANS COMMITTEE

"With a national credit almost destroyed, with property values greatly lessened, and with half the men of military age in the field in a civil war, twenty millions of people were called upon in four years to meet an expenditure of \$3,500,000,000 (\$175 for each person) and they showed themselves able to respond to the gigantic demand. The achievement not only stands without a parallel, but it stands unapproached. The credit was not chiefly due to leadership. What was demanded of the leaders was the ability to comprehend capacity and the fervent patriotism of the people. But the one man who is as much entitled as any other, with the exception of the Secretary of the Treasury, to the glory of these financial achievements was the Chairman of the Ways and Means, and the leader of the House of Representatives, Thaddeus Stevens."

—*Samuel McCall, Life of Stevens, 180-1.*

### CIVIL OR PUBLIC WAR—THE LAW

"Stevens then put the question whether the struggle was to be regarded as a 'public war,' under the rules of civilized warfare, or 'only a domestic insurrection before the courts of the country?' If it was an insurrection, then the insurgents had a right to 'the protection of the Constitution and municipal laws.' If it was a public war, 'then, they are subject to the laws of war alone.' He then cited Vattel to show that, when a republic broken into two armed factions, 'this is called civil war;' that, although a sovereign might call all who resisted him rebels, yet if they had strength enough to oblige him to carry on war, according to the established rules, he must submit to the term civil war, and that in such a case the combatants 'stand in precisely the same predicament as two nations who engage in a contest.' 'Could anyone,' he asked, 'deny to a contest of the magnitude of the rebellion the term "civil war?"' The powers of Europe had recognized the Southern States as belligerents. What was even more conclusive, 'with unfortunate haste we blockaded their ports,' and thereby ourselves acknowledged their belligerency. We 'had treated their captive soldiers as prisoners of war,' exchanged prisoners, and sent flags of truce. 'This is not the usage awarded to an unorganized banditti.' If public war existed, then it was clear that no compacts, laws and paper and obligations could be relied upon by the South against the North. The argument was in entire harmony with that to which he adhered to the end. He was unquestionably a great lawyer. It is impossible to read his speeches upon questions of a legal character and not appreciate the grounds for the tribute said to have been paid to him by another great lawyer and a political foe, Judge Jeremiah S. Black, when he said:

"'At the time of his death he had no equal as a lawyer at the American Bar.'" —*The Green Bag, Vol. 3, 260; also McCall's Life of Stevens, 201-2.*



## THE NEGRO

"I do not expect to see the day when in a 'Christian land merit shall counterbalance the crime of color;' but I propose to give them an equal chance to meet death upon the battlefield. \* \* \* The only place where they can find equality is in the grave. There all God's children are equal."

## SIMON CAMERON—RED-HOT STOVE

Said Lincoln to Stevens,—the latter did not like Simon Cameron—"You don't mean to say that Cameron would steal?" queried Lincoln. "No," answered Stevens, "I don't think he would steal a red-hot stove." Lincoln thought this too good to keep, and told Cameron what Stevens had said. Cameron took umbrage and his fellow State Republican comrade to task. Stevens retracted in these words: "I believe I told Lincoln that I did not think you would steal a red-hot stove. I now take that back."

—*McCall's Life of Stevens*, 311-12.

## MILEAGE FOR A SPEECH

To a member of the House of Representatives, who was gesticulating, walking up and down the aisle, and back and forth across the area, he called out:

"Do you expect to get mileage for that speech?"

## FEEBLE REMARKS OF AN INTRUDER

To a humble member of Congress, who was always inflicting, nevertheless, speeches upon the House, and who asked Stevens to yield him time to make a speech upon a certain measure, he said: "I now yield to Mr. — who will make a few feeble remarks."

## THE ANDREW JOHNSON IMPEACHMENT

"It was upon the motion of Mr. Stevens that a committee of two was appointed to appear at the bar of the Senate and impeach President Johnson. Stevens was made chairman of this committee, as he was the acknowledged leader in Congress. He was a member of the committee to prepare articles of impeachment, and also one of the managers to present the case to the Senate. And probably would have been selected as the leading manager, but for his age, seventy-four years, and physical condition. He made the most lawyer-like argument presented on his side of the cause. After standing for a few minutes, his strength gave out, and he was forced to resume his chair. He spoke for nearly half an hour from his seat, when his voice became inaudible, and the reading was concluded by General Benj. F. Butler. This was in April, 1868, less than four months before his death."—*Samuel McCall, in Life of Stevens*, 343.

## BENEFITS OF AN EDUCATION

"What earthly glory is there equal in lustre and duration to that conferred by education?"—*From speech in favor of Free Schools*.

## UNIVERSAL EDUCATION

"So cast your votes that the blessing of education shall be conferred on every son of Pennsylvania shall be carried home to the poorest child of the poorest inhabitant of the meanest hut of your mountains, so that even he may be prepared to act well his part in this land of freedom and lay on earth a broad and solid foundation for that enduring knowledge which goes on increasing through increasing eternity."—*Idem*.



## JAMES ALBERT WOODBURN'S TRIBUTE

"He is the greatest man, save one (Franklin), who ever lived within the borders of Pennsylvania."—*Woodburn's Life of Stevens*, 54.

## PAID \$800 FOR A SLAVE'S FREEDOM

While on his way to Baltimore to buy law-books he interceded in behalf of a crying colored woman, at the hotel where he stopped in Maryland, that he should do something to save her husband who was to be sold. Stevens interposed, and paid \$800, the price, but returned to Gettysburg, where he then lived, as he was unable after this expenditure to proceed, or to buy the coveted books.

—*As related by Godlove S. Orth, of Indiana, who grew up in Gettysburg. 'Woodburn's Life of Stevens,' 56.*

## REPORTING HIS SPEECH

"Giving his words as a report of his speech, without his overwhelming, crushing looks, seems like pointing to a shivered tree as a description of a thunder-storm."—*Rev. Jonathan Blanchard.*

## HIS POWER, MONEY, ETC.

"It was these qualities, firmness of purpose, clearness of vision and the absence of doubt and fear, that enabled him to overcome his inconsistent and more wavering Republican colleagues. He lost about \$90,000 by Confederate invasion and destruction of his iron works in Caladonia, Pa., in 1863, almost the entire savings of his life. He came to believe in a uniform national currency, issued as bills of credit by the general government alone. 'Money is the creature of law,' he said, 'just what the law makes it.' He had come to the faith that the government has the constitutional power to make money of whatever material it chooses, whether metal, paper, leather, tin, nickel, greenbacks, or old bones. The material does not matter, except for convenience. It is quality and use that count. If money is too abundant or too scarce, it is of no consequence whether it be coin or paper. One thousand million too much of gold is just as injurious in inflating prices as one thousand million too much greenbacks. And he desired that the volume of money be regulated by a sovereign representative government in the interests of the toilers and producers, and not by combinations of capitalists controlling the gold of the world in the interests of the moneyed classes."

—*Woodburn's Life*, 582.

## PROVISIONS OF HIS WILL

He provided that Thaddeus W. Stevens, of Indianapolis, Ind., a nephew, should be paid by the trustees one-fourth of all his property, if at the end of five years he had totally abstained from all intoxicating drinks, to which he was addicted; if at the end of the next five years, he had so abstained, another one-fourth; and, if at the end of another five years, he was to have the whole property in fee simple. Here was a lesson in temperance, but the nephew was not able to bear it. He was not able to qualify for his inheritance, and in that event, the remaining aggregate property, was to go 'to erect, establish and endow a house of refuge for the relief of homeless orphans, and \$20,000 was to be expended in building and the orphans were to be provided a home till fifteen years of age, and longer, if infirm.'—*Woodburn's Life of Stevens*, 588.



## A POOR COMMISSIONER

"Certainly," said Stevens, who was solicited to vote for an impecunious and incompetent Poor Commissioner; "We should make you Poor Commissioner, for I know of no one in all Lancaster county who would make a poorer commissioner than you!"

## GIDEON WELLES ON STEVENS

\* "Thad Stevens has genius and audacity, but not wisdom; imagination, but not sagacity; cunning, but not principle; will ruin his party or country, doubtless injure both."—2 *Welles Diary*, 626.

## WOODBURN'S TRIBUTE

"There was no doubt nobility and greatness in Stevens' character. He brought to his country's service learning and eloquence, firmness of will, directness and tenacity of purpose, the noblest courage, and a fine and consuming scorn and contempt for evasion and hypocrisy and the low arts of political tricksters. He was an unrelenting foe to every form of tyranny over the minds of men. He was a man of great mind and clear vision, to a degree quite rare among men, and, what is rarer still, he had the courage to assert his mind and follow his vision, the time-server and the trimmer stepped aside to let him pass. Amid the greatest changes that ever occurred in any decade of our national life, facing the detraction of enemies, the timidity of friends, the corruption and tyranny of power, and the cowardice of party, he stood with Puritan and Spartan firmness for a definite end, the goal of equity and justice that had been fixed for him by his unwavering democratic faith. Indifferent to praise or blame, where his cause was at stake; unmoved by considerations of rank, title, wealth or position, selfish motives did not animate his public conduct. The selfishness that was in him as it is in all men was not of the mean and miserly kind. While seeking his own interest and his own end in private life he would not defraud and oppress his neighbor. His selfishness in public life also was of the noblest kind. While he frequently sought place and power, not in honor preferring others, but crushing them, or pushing them aside, sometimes with seeming meanness, sacrificing his friends; and while, in natural vanity, he was possessed of a strong love of prominence and public praise, yet he pursued his ends and sought place and power not chiefly for his own glory, but that he might elevate his country and lift up the mass of downtrodden humanity which he saw around him.

"He was not a saint by any means; but like Cromwell, who was in many ways his prototype, he was ready to be painted as he was. 'I am just what I am whether you like me or not,' he said. In spite of the defects of his character, and they were many, it seems clear to those who study his life that the motives and aims that impelled him to speak and fight and labor and spend himself for his cause were not mean and selfish. His detractors were generally little men of conventional opinion, without vision or the spirit that would lead them to battle and sacrifice for a cause; Stevens, on the other hand, was a man of large mold and of great purposes, who was striving with his whole soul to carve other and better channels for the life of society, pursuing steadily, without variation of shadow or of turning, the two great purposes of his public life, the unity of the nation and the freedom of the slave.

"'He was undoubtedly, all things considered,' says Mr. Forney, 'the ablest parliamentary leader of his time. Tall in stature (five feet and eleven inches), deliberate in utterance and in gesticulation, and with a massive head and features so remarkable that no one who saw him once could ever forget him, his whole presence conveyed the idea of dignity



and force. His forehead was uncommonly high and broad, his features were bold and striking, his brows projecting and his cavernous eyes bright and piercing and full of expression. He was simple and direct in conversation, and when he listened he looked, as it were, into the very soul of the talker, piercing through duplicity and laying bare deceit.'

"In the chief cemeteries of Lancaster it was stipulated by charter that no person of color should be interred therein. Stevens had lots in both cemeteries, but he sent back the deeds, preferring to be laid to rest in Shreiner's cemetery, a private and humble burying-ground, not far from the centre of Lancaster and near one of the public schools. There on a worthy monument, erected to his memory, the visitor may see these characteristic words, composed for his epitaph by the Great Democratic Commoner himself:

"'I repose in this quiet and secluded spot,  
Not from any natural preference for solitude,  
But finding other cemeteries limited by charter rules as to race,  
I have chosen this, that I might illustrate in my death  
The principles which I advocated through a long life:  
Equality of man before his Creator.'

"He died as he lived, the relentless foe of privilege, the uncompromising advocate of democracy, of equal rights for all, special privileges for none, beneath the law. 'I know not what record of sin awaits me in the other world, but this I know, that I have never been guilty of despising a man because he was poor, because he was ignorant, or because he was black.' These words fitly apply to the life and character of Thaddeus Stevens. Before all else, he stood for liberty and the equal rights of men. To this faith he bore his consistent testimony from early life to the open grave and beyond. No truer democrat, no abler advocate of popular rights, ever stood in American legislative halls."

—*James Albert Woodburn, in his Life of Stevens, 607-10.*

## BECAME GREATER UPON ACQUAINTANCE

An eminent Congressman has said, "that Thaddeus Stevens was the only man he ever knew who loomed larger upon coming in contact with him."

## THADDEUS STEVENS ON SLAVERY

"Sir, for myself, I should look on any Northern man, enlightened by a Northern education, who would, directly or indirectly, by omission or commission, by basely voting or cowardly skulking, permit slavery to spread over one rood of God's free earth, as a traitor to liberty and recreant to his God. \* \* \* I entertain no ill-will toward any human being, nor brutes that I know of, not even the skunk across the way, to whom I just referred. Least of all would I reproach the South. I honor her courage and fidelity. Even in a bad, a wicked cause, she shows a united front. All her sons are faithful to the cause of human bondage, because it is their cause. But the North—the poor timid, mercenary, driveling North—has no such united defenders of her cause, although it is the cause of human liberty. None of the bright lights of the nation shine upon her section. Even our great men have turned her accusers. She is the victim of low ambition—an ambition that prefers self to country, personal aggrandizement to the high cause of human liberty. She is offered up a sacrifice to propitiate Southern tyranny, to conciliate Southern treason. \* \* \* So now in this crisis of the fate of liberty, if any of the renowned men of the nation should betray her cause, it were better that they had been unknown to fame. It need not be hoped that the brightness of their past glory will dazzle the eyes of posterity or illumine



the pages of impartial history. A few of its rays may linger on a fading sky, but they will soon be whelmed in the blackness of darkness. For unless progressive civilization and the increasing love of freedom throughout the Christian and civilized world are fallacious, the Sun of Liberty, of universal liberty, is already above the horizon and fast coursing to his meridian splendor, when no advocate of slavery, no apologist of slavery, can look upon his face and live." (The latter part of this speech alluded to Webster's seventh of March speech.)—*Thaddeus Stevens*.

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## THE SUPREME COURT OF THE U. S., UNDER MARSHALL

"Thus the national judiciary (under Chief Justice Marshall) became the keystone of the arch supporting the new political edifice and was invested with the most absolute and far-reaching authority. Since all legislative and executive action can in some way be put in issue in a suit, it is an authority often involving and controlling matters of high state policy, external as well as internal. At this very moment is it not believed, indeed proclaimed in high quarters, that the question of Asiatic dependencies for the United States and incidentally of the foreign policy generally, practically hinges upon judgments of the national Supreme Court in cases requiring the exercise of its function as the final interpreter of the Constitution? What judicial tribunal in Christendom is or ever has been, directly or indirectly, the arbiter of issues of that character?

"It was a national judiciary of this sort of which John Marshall became the head one hundred years ago. That he dominated his court on all constitutional questions is indubitable. That he exercised his mastery with marvelous sagacity and tact, that he manifested a profound comprehension of the principles of our constitutional government and declared them in terms unrivaled for their combination of simplicity and exactness, that he justified his judgments by reasoning impregnable in point of logic and irresistible in point of persuasiveness—has not all this been universally conceded for the two generations since his death and will it not be found to have been universally voiced today wherever throughout the land this century has been observed? 'All wrong,' said John Randolph of one of Marshall's opinions, 'All wrong—but no man in the United States can tell why or wherein he is wrong.'"

—*Richard Olney of Boston, Mass., attorney-general and afterwards Secretary of State in Cleveland's Cabinet, delivered in Boston, before Boston Bar Ass'n, Feb. 4, 1901. He left a \$50,000 yearly law practice to take a cabinet position.*

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## WEBSTER ON POLITICAL ECONOMY

"Though I like the investigation of particular questions, I give up what is called the science of political economy. There is no such science. There are no rules on these subjects so fixed and invariable that their aggregate constitutes a science. I believe I have recently run over twenty volumes, from Adam Smith to Professor Dew; and from the whole, if I were to pick out with one hand all mere truisms, and with the other all the doubtful propositions, little would be left."

—*Harvey's 'Reminiscences of Daniel Webster,' 204.*



## EMORY A. STORRS (1833-1885), Illinois

### ACQUISITIVENESS

Retort to a N. Y. banker, sojourning with Storrs at Saratoga Springs, N. Y., from whom Storrs requested a loan of \$50 to take a quick train to Chicago to defend a friend who offered him a \$10,000 fee to get him out of trouble, Storrs saying to the banker that as soon as he got to Chicago, he would return him the money. But the banker proceeded to give him a lecture on thrift, etc., when the great advocate retorted:

"Money-making is not an intellectual process, and those who acquire wealth are not a superior kind of men. There is nothing intellectual about acquisitiveness. It is less highly developed in the rich man than in the chipmunk. The beaver is much superior in this regard. Where are the rich men of history? There are two only who live in the legends of literature, Dives, who survives on account of his former connection with a pauper, and Croesus, because his name has been used by poets merely as a synonym. Where are the stockholders who built the Parthenon? Doubtless, in their day, they stood around Athens and spoke of the fine work Phidias was doing for them. But where are they today, and where is Phidias, the architect?"

### APOSTROPHE TO WATER

(The following is an extemporaneous speech made by Storrs in St. Louis, Mo., at the Lindell Hotel, to a congratulating circle largely composed of members of the local Bar. Storrs had been successful in defending General Babcock for his complicity in the "Whiskey Steal." The case was tried in the U. S. District Court in that city. The eminent Chicago lawyer, whose failing was imbibing a little too freely, was urged to take "something stimulating," as no man could get eloquent over water; and then he was challenged to make a temperance speech, when he mounted a chair, called for a glass of water, and gave them the following):

"How do you expect to improve upon the beverage furnished by Nature? Here it is—Adam's ale — about the only gift that has descended undefiled from the Garden of Eden! Nature's common carrier—not created in the rottenness of fermentation, not distilled over guilty fires! Virtues and not vices are its companions. Does it cause drunkenness, disease, death, cruelty to women and children? Will it place rags on the person, mortgages on the stock, farm, and furniture? Will it consume wages and income in advance and ruin men in business? No! but it floats in white gossamer clouds far up in the quiet, summer sky, and hovers in dreamy mist over the merry faces of all our sparkling lakes. It veils the woods and hills of earth's landscapes in a purple haze, where filmy lights and shadows drift, hour after hour. It piles itself in tumbled cloud-domes and thunder heads, draws the electric flash from its mysterious hiding places and seams and shocks the wide air with vivid lines of fire. It is carried by kind winds, and falls in rustling curtains of liquid drapery over all the thirsty woods and fields, and fixes in God's mystic eastern heavens His beautiful bow of promise, glorified with a radiance that seems reflected out of heaven itself. It gleams in the forest crystals of the myriad forests of the world, and tints each fruit and flower. It is here in the grass blades of the meadows, and there where the corn waves its tassels, and the wheat is billowing! It gems the depths of the desert with the glad, green oasis, winds itself in oceans around the earth, and roars in hoarse, eternal anthems on a hundred thousand miles of



coast! It claps its hands in the flashing wave crests of the sea, laughs in the little rapids of the brooks, kisses the dripping, moss-covered, old oaken well-buckets in a countless host of happy homes! See these pieces of cracked ice, full of prismatic colors, clear as diamonds! Listen to their fairy tinkle against the brimming glass, that sweetest music in all the world to one half fainting with thirst! And so, in the language of that grand old man, Gough, I ask you, brothers all, would you exchange that sparkling glass of water for alcohol—the drink of the very devil himself?"

### STATE SOVEREIGNTY

"The Republican party believes that this government is a union *of the people*, and not a compact of States. It believes that these States are not like a lot of marbles in a bag, which touch but do not adhere, but though 'distinct like the billows are one like the sea.' For half a century or more, we argued this question on the stump, in Congress, and in the courts. We won in all these places. Not satisfied with the decision, the same men who now howl about 'centralization' submitted the question to that tribunal of last resort, from which no appeal can be taken, the arbitrament of war. They were again beaten. It cost us three thousand millions of money, five hundred thousand lives, and over four years of war to win, on that trial. I am opposed to a re-trial. Enough of money and enough of lives have already been wasted on the settlement of that question; and no such thin disguise as 'local self-government' will ever seduce us into the re-opening of that subject."

—*From a speech in Springfield, Ill., in the Grant-Greeley Campaign, 1872.*

### DEMOCRATIC PARTY COMPARED TO THE PRODIGAL SON

"It takes but a very few days contact with the Democracy to stain the white and spotless garment of Republicanism. They mistake a great scriptural story, Mr. Chairman. The air is full of devotion. I feel a good deal like talking Scripture, myself. They are misled by the story of the Prodigal Son. They seem to think that the parable was told as an invitation for young men to go off and be prodigals. It was not told for any such purpose. The Prodigal made nothing whatever out of the experiment. He took what money belonged to him, and went away, foolishly, as other young men have done. He fell among the Democrats, and was naturally cleaned out. And when his money was gone, and his clothes gone, and his credit gone, the Democrats of that day had no further use for him. He went into the swine business, Mr. Chairman, as I read it. He went to feed swine, and the swine were discouraged; and then he went to feeding with swine, and they turned him out, and it was hard times with the poor, young, Independent Prodigal. And without clothes enough to wad a gun, he started for home. The point comes right here: how much did the Prodigal make out of that enterprise? The good, dear, old father, looking down that dusty turnpike, expecting the boy back ultimately, and seeing him coming, threw himself around his neck and welcomed him. And what did he give him? He did not give him back any of the farm; he did not give him an office—no, not the smell of an office. The Prodigal had too much good sense to ask for one. All he cared for was to be taken in as a hired servant. And what that father gave him was a new suit of clothes, and a ring on his finger, and a veal dinner—a fatted calf. That contribution has always been overestimated. Everybody was engaged in raising calves—calves were long. And the boy who staid at home, did not quite relish this uproar, on account of this sore-eyed Prodigal, and he turned to his father, with some complaint; but his father said —'don't complain, son, you're always with me; all that I have



is thine.' Not a cent of money, not a foot of ground, not an office was given to the Prodigal; but the boy who staid at home, had it all. Now, I do hope that my Independent friends won't wait—that they won't tarry. My friends down there in New York. You can never occupy a mansion, the dome of which glitters with stars, and is as broad as the very heavens. Come back to the old mansion. It is capable of entertaining the fifty millions of good, earnest, patriotic people of this nation. Come back to it. After all the decayed timbers of decayed chattelhood have been removed, and we have supplied their places with the everlasting granite of universal freedom, come back to it—with its glorious inscriptions written and emblazoned upon its walls, no longer devastated by the fugitive slave-law; no longer befouled and besmirched, by the inscriptions of the Dred Scott case. Come back with the 14th and 15th Amendments, that glitter like shining planets from the white and stainless walls."—*Speech in the Hayes-Tilden Campaign, 1876.*

#### A CROSS-EXAMINATION—TO ELICIT NOTHING DAMAGING

(A Mr. B. B. Bulwinkle, Chief of the Fire Patrol, of Chicago, had been examined, in chief, for the prosecution; stating that he arrived upon the scene of the burning building; found evidence of incendiarism—shavings, and other highly combustible substances, saturated with kerosene, and many burnt matches, around the center of the room, where the fire started, which, it was quite apparent, were put there by the prisoner, whom Storrs was defending. His evidence was so positive, straight-forward, and damaging that defendant's counsel saw to cross-examine him, upon the facts, would be but to emphasize it, and convict his client. The following, therefore, was the method pursued):

Q. What is your name, did you say, sir?

A. My name is Bullwinkle.

Q. Yes, sir. What is your given name, Mr. Bullwinkle?

A. Benjamin.

Q. Benjamin Bullwinkle! yes. Have you any middle name, Mr. Bullwinkle?

A. Yes, sir: my middle name is Butterworth.

Q. Benjamin Butterworth Bullwinkle! What did you say your official position is?

A. I am Chief of the Fire Patrol.

Q. Of the City of Chicago?

A. Yes, sir.

Q. Yes, sir. Well, Mr. Benjamin Butterworth Bullwinkle, Chief of the Fire Patrol, of the City of Chicago, Cook County, State of Illinois, I belive that will be all.

#### TERSE SAYINGS BY STORRS

"The independent movement is like the trip of the blind ass in a park. Very much walking and very little getting ahead."—(*Boston, 1884*).

"One custom-house officer notified the committee of his submission to the royal will, by saying, that he had fourteen reasons for obeying his Majesty's commands—a wife and thirteen young children."

—(*Portland, Me., 1868*).

"General Grant has grown through the mists and the clouds of defamation, and while those fogs may envelope his feet, his head is in the sunshine. Clouds and mists gather round the base of the mountain, but the summit is away above storm and cloud—is in brightness itself."

—*From letter to Benj. H. Brewster, 1880.*



(Alluding to the platform of the Democratic party of 1868, in his Cleveland, O. speech, in the campaign of 1880, after quoting,—“Should it; the Republican Party, succeed in November next, and inaugurate the President, in the coming March, we shall meet as a subdued and conquered people, amid the ruins of liberty, and the scattered fragments of the Constitution. The pillars of the government are already rocking on their base, etc.,” Mr. Storrs turned around to the Chairman and the Band, and said:—

“Let the band please play a funeral march,” and added:

“Have you seen any trouble with the pillars of the Government? The trouble was not with the pillars of the government: they did not rock; the trouble was with the gentlemen who were looking at the pillars of the government. They were like the fellow who had been attending a lecture on astronomy. Going home loaded with a great deal of Democratic logic, with a step, weary and uncertain, with the earth revolving a great many times upon its axis, he affectionately clasped a lamp post, and said: ‘Old Galileo was right about it after all: the world does move’.”

### RETORT TO A WITNESS

To a witness, with whom, Mr. Storrs had had an understanding that he would testify a certain way, and who went on the stand, and swore directly opposite (a ground for a new trial, by the way), the following dialogue took place:—

Q. “So, that is your testimony, is it, Mr. Jones?”

A. “Yes, sir. I have more respect for the truth than I have for you!”

Q. That’s right; but you ought not to forsake an old *friend*, for an entire *stranger*, at your time in life.”

### APHORISMS

“You cannot repeal an accomplished fact, any more than you can repeal yesterday’s sunbeam.”

“An Independent in politics is in the position of an ox just half jumped over the fence—utterly worthless either for aggressive or defensive purposes.”—(*Boston, 1884*).

“New York City stands like the angel of the Apocalypse, with one foot resting upon the sea, and the other upon the land, the mistress of both.”  
—(*Chicago, 1884*).

“Andrew Johnson’s administration was a leaden boat, with iron sails, the devil for a pilot, the wrath of God for a breeze, and hell for the nearest port.”

Being told that it hurt him to meet the truth. “Oh, no,” was Storrs’s quick rejoinder, “I never meet the truth—it and I always travel in the same direction.”

Being twitted of recklessness in money matters, he retorted: “Money! If I should try to save it, I should become its slave. Now, it is my weapon. When I fling it at people, they become slaves of mine.”

“I like a big thing—a power—no matter how crude or raw it may be in its exhibition. Indeed, so saturated am I with the Chicago spirit that I would be glad to shake hands with the force of gravity, if it could take material form. I would go farther to see the force of gravity than I would to see the greatest man on earth.”



## A TARIFF SPEECH

"Now, my fellow citizens, I have seen the workings, in a narrow portion of the country, of the doctrine of free trade. I visited the State of California, two or three weeks ago. I am familiar with the logic of free trade; I used to believe in it. There is no literature in the world so captivating to a young man, as that of free trade, but a little more reading, and a little more thinking, on my own account, and a good deal more experience, demonstrated to me, that it would not work. I remember that the millennium of free trade doctrine is 'a cheap product,' and when a free trader argues with you and gets so far as to demonstrate that his policy will result in a cheap product, he thinks the debate is closed. The fact is, it is only just begun. What this government was organized for, was not cheap cotton, but was: intelligent, industrious, well-to-do citizens. I am probably heterodox, but I think a great deal more of a prosperous laboring man than I do of a cheap boot, and the policy of protection, in the end, gives us both, and everybody is benefited by it.

The City of San Francisco ought to be the very Elysium of free trade. Boots are cheap; the Chinaman makes them. Underwear is cheap; the Chinaman makes it. Tinware is very cheap; the Chinaman makes them. Cigars are cheap; Chinaman makes them. Is San Francisco prosperous? Is California prosperous? California is the only great state in this Union that shows a decrease of population and prosperity in the last two years (speech made in Cleveland, 1880). San Francisco is the only great city in the Union that has reduced its capital, its business and population since 1876. What is the trouble? You have a cheap product. It is the result of a degraded and pauperized labor. The Chinaman, under the cast-iron habits of 3,000 years of experience in famine and starvation, can work and live in a fashion that the white laborer cannot do, and I hope to God he may never be called upon to do. He can live on rats and the white laborer cannot. He pays nothing for education, and the white laborer does. The white laborer has a home, and the Chinaman has none. With all these advantages in his favor, if a white man competed with him, he must accept the conditions of the competition. He must live and breathe and move and have his being, as his competitor lives and moves and has his being."—*At Cleveland, O., 1880.*

## LEGAL INSANITY

"Legal insanity cannot exist, I think, wherever the party setting up insanity as a defense has sufficient of mental capacity left to discriminate between right and wrong—to know the difference between guilt and innocence—to comprehend the consequences if the act with the commission of which he is charged, and unable to control his own conduct. Now, in my judgment—and I want to suggest that to you—I don't know how crazy, how insane you may conceive a man to be, if he comes within those limitations the law must treat him as responsible."

—*To Chicago Homeopathic Medical College Graduates.*

## DAMAGES AND RETALIATION

Storr told Judge Sutherland, of Salt Lake City, Utah, the author of the leading work on damages in this country, that he had read his work on 'Damages' with interest and profit, but found nothing in his work, or that of any author, on the origin of damages. To which the Judge replied:—"Oh, yes, they do. You will find the law of damages laid down in the old Mosaic law, 'an eye for an eye and a tooth for a tooth'." "No, no," retorted Storrs, "That is not damages—compensation for an injury sustained; that's retaliation."



## THE ANALYTICAL METHOD

An expert real estate witness testified that ground taken by a condemnation jury, some five years before the trial on appeal took place, was worth \$150 per front foot, at that time, and in the latter trial, that it was worth five years before \$200.00 per front foot. Said Storrs, in cross examination:—

“What is it worth now?” (Objection—because not asking for present values, but the value five years before).

The truth was, there had been a depression, and the property was not then worth what it was during the trial below. “But,” said Storrs, “this witness is offered here, as an expert, and I want to test his knowledge as a real estate expert.” “Go ahead,” said the Court, “if asked for that purpose.” A somewhat lower value was fixed, by the witness, Mr. Brown.

Q. “Did you not try to sell for less price than the jury below gave?”

A. “I did not.”

At this juncture, Storrs produced an old musty advertisement that Brown, as a real estate agent, had run in the Chicago Tribune, five years before, wherein he advertised this identical ground, at \$140 per foot, and poking the advertisement in the face of the witness, asked:—

Q. “Did you insert that ad in this paper?”

A. “Yes, I think I put that ad in the Tribune, but it had entirely slipped my mind.”

Q. “Well, did you sell it?”

A. “No, but I did not try very much.”

Q. “But, you were not paying out your good money for this ad for nothing were you? You were endeavoring to sell it were you not?”

A. “I think I advertised it but once.”

Q. “You were trying to sell it for \$140 per foot, were you not? And you now say it was worth at that time, \$200 per foot. Might not one of the reasons be that you asked too much, even at \$140?”

(It is needless to say the testimony of this witness was completely destroyed, by what Storrs called “the analytical method.”)

## THE “LORD’S” SUPPER

Storrs gave an elaborate dinner, in honor of Lord Chief Justice Coleridge, of England, upon the occasion of the judge’s visit to this country, in the autumn of 1883. The leading judges and lawyers of Chicago, were guests. Just as all were ready to sit down to the banquet, in came the sheriff of Cook County, with an attachment writ, to satisfy a judgment someone had obtained against Storrs, as he was always in debt. The matter was hushed up, the judgment paid by his friends, and the merry-making went on. When it came Storrs’ turn to speak, nothing daunted, he rose and said:—“I have heard many times of ‘The Lord’s Supper,’ but never before knew of one being levied upon for the payment of a debt!”

## THE EXPERT DOCTOR

Said Storrs to an expert doctor, who had testified that “there was a discoloration by the extravasation of the sanguinous fluid beneath the cuticle,” in a boy’s arm who had been assaulted by the teacher. Said Storrs:

“You mean, do you not, Doctor, that his arm was ‘black and blue?’”

## LAWYERS—GOOD LEGISLATORS

“I believe, taken all in all, the lawyer makes a better legislator than the merchant, the banker, or the farmer. He has fewer prejudices and more knowledge. I am no believer in our reaching the millennium through the



preponderance of the business man in politics. You hear a good deal nowadays of putting the Treasury Department and other governmental offices, in charge of business men, who have accumulated money. You cannot put your finger on the name of any great national financier, in this country, who has been a man of wealth. Hamilton stands at the head of that class of men, and while Secretary of the Treasury, he sent one day letters to various parties, asking for the loan of \$20. Gallatin was not a rich man. Hamilton was a lawyer; Solmon P. Chase was a lawyer—he never sold any dry-goods, nor did he engage in any mercantile business. It is almost proverbial that our greatest national financiers have been the poorest men. A national financier differs from the private merchant, whose essential quality is profitable management of his money, and who must accumulate to meet the requirement of business. A government has no business to accumulate any larger sums of money than it needs to pay its expenses. Accumulation by the government, means just that amount of additional taxation upon the people. The trouble with the lawyers is that, in many instances, they do not know enough law to be good lawyers, and know a little too much law to be good business men.

“Nor do I think the lawyer is inclined to frame laws which admit of two interpretations. \* \* \* We find, for instance, a good deal of difficulty in redundant forms of pleading. That is not the fault of the law, which cannot be held responsible for the dunces that fail to follow it. Clear heads in any profession in this world, are the exception, and such a facility of expression as will exclude every other meaning, excepting the one intended, is a faculty possessed by few mortals. I do not expect to live long enough to see the day when there will be such general accuracy of statement, in editorials, speeches, legal opinions, or statutes, as to avoid all chance of misunderstanding or misconstruction; yet the tendency of legal training is towards accuracy of statement. The lawyer can put an idea upon paper more clearly and precisely than a good merchant, a good mechanic, or a good farmer. But a clear-headed farmer is by all means preferable to a fuddle-headed lawyer.”—*Adams' Life of Storrs*, 610.

## STATE CANNOT IMPAIR THE OBLIGATION OF A CONTRACT

“It is claimed, as we understand, that inasmuch as it is assumed that the legislature has the power to fix the rate of charges, imposed by a common carrier, where such carrier is a natural person, it must possess the same and equal power over a corporation, which is a being of legislative creation. \* \* \* The question presented by this bill is, whether it impairs the obligations of a contract; and it is not what the power of the State may be in the exercise of its merely political functions over its citizens. The State has no sovereign power to impair or alter its own contracts, or the contracts of any one else. If the contract of the State is with an individual, it cannot impair it. If with a corporation, it cannot impair that.

“I deem it unnecessary to discuss the metaphysical powers of governments generally. It is sufficient to say that in this country, legislative power is limited by the fundamental law. The legislature of the State can pass no law impairing the obligation of a contract. This is a fundamental principle. The legislature can deprive no freeman of his property, without due process of law, and that a franchise granted by a charter is property, is fundamental.

“The legislature cannot assume judicial functions, and any act of that character, is utterly void. The question presented by this bill is—Does the act fall within any of the above stated limitations of legislative power? Any time expended in discussing what the legislature might do with a corporation, or an individual, to whom it was bound by no contract, is, we suggest, wide of the mark, and a waste of time. It will be sufficient to decide what a legislature may do in regulating the



business affairs of its citizens, when that question arises. The question now is—What may the legislature do with reference to the rights of parties or corporations which it has secured to them by contracts? If the charters of the railroad companies are contracts, if the right to fix tolls is a franchise, the bill is unconstitutional, because it seeks to deprive the companies of those rights. The same would be true of any private individual, similarly situated."

—*Argument for the sanctity of a contract for the railroads—chiefly the Illinois Central R. R. Co., before Gov. John M. Palmer, in 1869, —the bill being from four to three cents a mile*

### DESCRIPTION OF R. B. HAYES

"There stood R. B. Hayes, clad in a long, linen duster, with a straw hat on the back of his head, holding in his right hand, a yellow, worsted bag, with the letters 'R. B. H.' worked in purple by Lucy. And no one spoke to him except a policeman, and he told him 'to keep off the grass.'"

### A TALKATIVE FRIEND—LIKE JACKASS

Of a well-known lawyer who possessed a propensity for talking for publication, and was always hunting for interviews, Mr. Storrs observed:

"He reminds me of a jackass we had on the farm down East. He used to come around to the empty rain-barrel, stick his head into it and bray, and from the mighty roar that followed, he thought he was talking to the universe."

### TALK MUCH AND SAY LITTLE

Of a man who talked much, but said little, Storrs said:

"He is a fellow reminding me of a suddenness, such as if you opened what looked like a parlor door and found all back-yard."

### MODERATE CHARGER OF FEES

One day, Gen. Martin Beem had Storrs in court to testify in an assessment of damages, for the dissolution of an injunction, and when the opposite counsel asked him if his professional charges were not usually very high, he responded, in an assumed solemnity of voice, which amused even the Court—

"I do not propose that the inadequacy of my charges shall ever be a disgrace to my profession."

### PERORATION IN A LIBEL CASE

"This is, indeed, a serious record to make up against a man. The plaintiff has made it for himself. He demands your verdict upon this wearisome detail of heartlessness and oppression. Grieved as we may be that a fellow citizen should thus stain the honor of the high office which he held (a Judge), or that in this great city, honored as it has been by its magnificent and far-extending charities, many a man could be found who would oppress the weak in their helplessness, and turn the widow (Mrs. McMurray) and the orphaned children of the dead soldier, beggared and starving, into the streets, we cannot refrain from the solemn duty which has been imposed upon us, of affixing the seal of condemnation to such offenses against our consciences as have been proven in this case. You must say whether the unjust Judge, the avaricious man, shall be sustained or not. Your verdict today may be, as I trust it will be, so distinctly pronounced that it shall be like letters of flaming fire, painted against the sky, that all the world may read it; and when avarice,



with its greedy hand, would seize upon the widow's mite, or press the unfortunate debtor to the earth, or when the Judge forgets the dignity of his high office, they may look upon the record and take warning from it. \* \* \* You are not, gentlemen of the jury, the prophets of the Lord, but it is an old saying that 'the voice of the people is the voice of God.' You speak for the people; you represent the people. Take this simple story—the most beautiful thing in literature—and apply its teachings here. This plaintiff, as did the Israelitish King, spared to take of his own substance to supply the wants of those who made demands upon him, but he took this poor woman's home, endeared to her by a thousand associations, hallowed by a thousand sacred memories, and satisfied his creditors with that! And even as the finger of the stern old prophet pointed to his royal listener as guilty of the very crimes which he had but denounced, so will the verdict of this jury, reciting the story of the wrongs which this widowed woman has suffered, declare to this plaintiff, 'Thou art the man.' "

(The plaintiff's counsel became demoralized, and did not dare to take the verdict of the jury after Mr. Storr's speech. The suit was withdrawn).

—*Higgins v. Wilbur F. Storey, proprietor of the Chicago Times, who published the story of Mrs. McMurray's wrongs in being sold out, under the mortgage, by Judge Van H. Higgins.*

—*Isaac E. Adams' Life of Storrs, 125-141.*

## THE PILLARS OF THE GOVERNMENT

"Have you seen any trouble with the pillars of the government? The trouble was not with the pillars of the government; they did not rock; the trouble was with the gentlemen who were looking at the pillars of the government. They were like the gentleman who had been attending a lecture on astronomy. Going home, loaded with a great deal of Democratic logic, with a step weary and uncertain, with the earth revolving a great many times upon its axis, he affectionately clasped a lamp post and said 'Old Galileo was right about it: the world does move.' And should it, the Republican party, succeed in November next and inaugurate the President, we will meet a subdued and conquered people, amid the ruins of liberty, and the scattered fragments of the Constitution. I have been from the tempest-tossed waters of the Atlantic to the peaceful seas of the Pacific, over the mountains, along great rivers, across magnificent plains and prairies, through deserts, down into caves, and I have not seen a single ruin of liberty, nor discovered a solitary fragment of the Constitution. We do not meet as a subdued and conquered people. General Grant was our nominee for President, and he was elected. He being the candidate, there was a strong probability that he would be inaugurated if elected.

"Forthwith we banded this great continent with ribs of steel. Forthwith this Republican party carried the gold ore across those seas, back to the lands of old Egypt, and back to the shadow of the Pyramids, back to old Damascus, and brought all the history and tradition, spices and gums, incense and myrrh, and landed them in the fruitful West, where we received them with one hand and distributed them all over the habitable globe with the other. This great Republican party interfered with no pillars of the government. It found in that edifice the decaying timbers of human chattelhood. Bless God! it removed them, and replaced them with the everlasting granite of universal freedom. It broadened out that splendid edifice, its base covered the whole continent, each ocean washed its base. It reared that splendid dome, decked with stars, clean above the clouds, where, thank God! it shines and shines today, bathed in the glorious sunshine of everlasting fame. It has taken out the old, foul records of the olden time, the old, pestilential heresies, states rights,



secession, the thumb-screw, the faggot, the chain, the whip, all these; the manacled slave, the padlock for the lips, the throttled thought, all these; the deep, damning and almost ineffacable shame of national dishonor, all these it has effaced from its walls, and written there, shining and resplendent, living forever, the grandest record of achievements that the history of the world has ever inscribed."

—*Speech in Garfield-Hancock campaign, 1880, at Cleveland, O.*

(He had been referring to the Democratic predictions of 1868, when it was stated in their platform, "that the pillars of the government were rocking on their base.")

## GERMAN DEMOCRATS

In the Douglas-Rose case, at Ann Arbor, Mich., in the midst of a powerful argument as to whether or not a jury should be impanelled, Mr. Storrs was interrupted by an opposing counsel's remark: "How would it do to try it in Freedom Township—the town of six nations over by Manchester, where the Germans are all Democrats?" "German Democrats," said Storrs, "a jury of that description wouldn't know whether the Savior was crucified on Calvary or shot at Bunker Hill!"

## THE EXCORIATION OF A WITNESS

"Why, gentlemen of the jury," exclaimed Storrs, "this man with a soul compressed to the size of an internal wart, reminds me of what a great Kentuckian said of a similar being, who was advised to repent hard for many years in order that Omnipotence might get jurisdiction to damn him."

## HEAVEN AND HELL—COMPARED

A young man once approached him with, "Mr. Storrs, pardon me, but you are a man who has thought much upon all topics. I wish to ask for your idea of heaven and hell." Fixing his keen eyes on the inquirer, Mr. Storrs answered, "When I think of the beauteous descriptions of the abode of the saints, and when I recollect that many noble, witty, genial, souls have died 'unregenerate,' I must answer you, sir, that, while, doubtless, heaven has the best climate, hell has the best society."

(Emory A. Storrs, was born in Hinsdale, N. Y., 1833; died in Chicago, Ill., 1885, aged 52; was precocious, writing an essay on "Nature" at 9; began to read law at 13; entered State Attorney-General B. Champlin's law-office, at 17—the same year, Austin and Scroggs' office, in Buffalo; admitted to bar, at Batavia, N. Y., at 21; married Caroline Mead, of Buffalo, the same year; attained high social and legal rank in Buffalo; moved to N. Y. City at 38, where expenses exceeded income, and the same year settled in Chicago, Ill., where he soon gained a foothold. His weakness was an inability to save money, though paid large fees; hearing of N. Y. double and thribble millionaires, he rebuked his informer with, "I am tired of hearing of mean men!" Speaking of public speaking, he gave this recipe:—"Fill yourself up, and then there is a flow; know all — both law and fact—that can possibly be advanced for and against").



## JUSTICE JOSEPH STORY (1779-1845), Massachusetts

### THE STATUTE OF LIMITATIONS

"I own myself to be one of those who consider the statute of limitations a highly beneficial statute, and entitled, as such, to receive, if not a liberal, at least a reasonable construction, in furtherance of its manifest object. It is a statute of repose; the object of which is to suppress fraudulent and stale claims from springing up at great distance of time, and surprising the parties or their representatives, when all the proper vouchers and evidences are lost, or the facts have become obsolete from the lapse of time or the defective memory, or death, or removal of witnesses. The defense, therefore, which it puts forth is an honorable defense, which does not seek to avoid the payment of just claims and demands, admitted now to be due, but which encounters, in the only practicable manner, such as are now beyond the power of the party to meet, with all the proper vouchers and evidence to repel them. The natural presumption certainly is that claims which have been long neglected are unfounded, or at least are no longer subsisting demands. And this presumption the statute has erected into a positive bar. There is wisdom and policy in it, as it quickens the diligence of creditors, and guards innocent persons from being betrayed by their ignorance, or their over confidence in regard to transactions which have become dim by age. Yet I well remember the time when courts of law exercised what I cannot but deem a most unseemly anxiety to suppress this defense; and when, to the reproach of the law, almost every effort of ingenuity was exhausted to catch up loose and inadvertent phrases from the careless lips of the supposed debtor, to construe them into admissions of the debt. Happily, that period has passed away, and judges now confine themselves to the more appropriate duty of construing the statute, rather than devising means to evade its operation.

"It appears to me, also, that it is the duty of the court to adhere to the very terms of the statute, and not upon imaginary equitable considerations, to escape from the positive declarations of the text. No exceptions ought to be made, unless they are found therein; and if there are any inconveniences or hardships growing out of such a construction, it is for the legislature, which is fully competent for that purpose, and not for the court, to apply the proper remedy."

—*Mr. Justice Joseph Story—Spring v. Gray, 5 Mason, 523.*

Judge Story at 32 declined the Chief-Justiceship of the Supreme Court of Massachusetts, and at the same age, 1831, was appointed an Associate Justice of the Supreme Court of the United States, of which he was judge 34 years, until his death in 1845, at the age of 66, he having been born at Marblehead, Mass., in 1779. "The Walter Scott of the Common Law." "His chief characteristic," says Irving Browne, "is not strength, but learning, fullness and variety." "Lacked accuracy and patient investigation," says John W. Wallace. He gave to the world some 13 volumes of legal treatises.—*The Author.*

### WOMAN

"To the honor, to the eternal honor of her sex, be it said, that in the path of duty no sacrifice is with them too high, or too dear. Nothing is with them impossible, but to shirk from what love, honor, innocence, religion, requires. The voice of pleasure or of power may pass by unheeded; but the voice of affection never. The chamber of the sick, the



pillow of the dying, the vigils of the dead, the altars of religion, never missed the presence of the sympathies of woman. Timid though she be, and so delicate that the winds of heaven may not too roughly visit her, on such occasions she loses all sense of danger, and assumes a preternatural courage, which knows not and fears not consequences. Then she displays the undaunted spirit, which neither courts difficulties nor evades them; that resignation, which utters neither murmur nor regret; and that patience in suffering, which seems victorious even over death itself."

—*From an oration on Lady Arbella Johnson, —Life and Letters, 550.*

### THE SCIENCE OF THE LAW

"The law is a science of such vast extent and intricacy, of such severe logic and nice dependencies, that it has always tasked the highest minds to reach even its ordinary boundaries. But eminence in it can never be attained without the most laborious study, united with talents of a superior order. They are to be penetrated by skill, and mastered by a frequent survey of landmarks. It has almost passed into a proverb, that the lucubrations of twenty years will do little more than to conduct us to the vestibule of the temple; an equal period may well be devoted to exploring the recesses."

—*An address on the Life and Character of Prof. Jno. H. Ashman, 2 Story's Life and Letters, 145.*

### LAWYER SHOULD HAVE VARIOUS KNOWLEDGE

"A lawyer, above all men, should seek to have various knowledge, for there is no department of human learning or human art which will not aid his professional duties. It has been the reproach of our profession in former ages, and is, perhaps, true to a great extent in our own times, that lawyers know little or nothing but the law, and *that*, not in its philosophy, but merely and exclusively in its details. There have been striking exceptions, such as Lord Hardwicke, Lord Mansfield, Lord Stowell, Lord Brougham, and Mr. Justice Blackstone. But these are rare examples; and too few to do more than to establish the general reproach. I might, in our country, add an exception in Chancellor Kent, who is a scholar and general reader."

—*In letter to his son, W. W. Story, Jan. 27, 1839.*

### STORY'S LIST OF 26 GREATEST CONTEMPORARY ORATORS

"If I were called upon to say who were the ablest orators in America, and were generally esteemed, within my memory (and I can confidently speak for the period of the last 40 years) I should say they were:

Fisher Ames  
 Samuel Dexter  
 Harrison Gray Otis  
 John Q. Adams  
 Josiah Quincy  
 Edward Everett, and  
 Daniel Webster, of Mass.  
 Alexander Hamilton, and  
 Rufus King, of N. Y.  
 John Wells, and  
 Thomas A. Emmett (an Irishman by birth) also of N. Y.  
 John Sergeant  
 Joseph Hopkinson, and  
 Horace Binney, of Penn.  
 Luther Martin, and  
 William Pinkney, of Md.



Patrick Henry  
 James Madison  
 John Marshall  
 John Randolph (an eccentric genius) and  
 William Wirt, of Va.  
 William Gaston of N. C.  
 Robert G. Harper, and  
 Robt. Y. Hayne, of S. C.  
 Henry Clay, of Ky.  
 Jas. A. Bayard, of Del."

—*From letter to A. Hayward, Esq., of England, who wished materials for an article on American Orators and Statesmen, Jan. 4, 1840.*

## GRAY AND POPE HIS FAVORITE POETS

Virgil was his favorite of the Latin poets, and he never traveled without a little pocket edition, which is marked all over by him. But his favorite poets were Gray and Pope. The nice wit, the terse epigrammatic point, the polished compliment of Pope, and the elaborated diction and classic spirit of Gray, had for him greater charms than the musical elegance of Spencer, or the naive and vigorous nature of Chaucer. He delighted in the simplicity and quiet of Goldsmith and Cowper, and Crabbe's stern pictures were to his taste. Of the modern poets, Burns and Byron were his favorites, Wordsworth he thought too tame, Shelley too visionary; Coleridge and some poems of Tennyson he admired, I think, however, his favorite poem of all in the English language was Gray's *Elegy in a Country Churchyard*.

—*Story's Life and Letters, vol. 2, pp. 421-2.*

## CHARACTERIZATION OF PARSONS

"Parsons was a man who belonged not to a generation, but to a century. The class of men of which he was a member is an extremely small one: In his wonderful wisdom and vigor of mind, he bore a strong resemblance to Hamilton. The fact that he had no equal deprived him of opportunities for the exhibition of his prodigious abilities, and rendered unnecessary that extraordinary exertion which is usually made by ambitious men to maintain a great reputation. His fame might and would have been much extended by rivalry. But there could have been no augmentation of his ardor and diligence in the pursuit of knowledge. He mastered whatever he directed his energies to with the most surprising ease and rapidity. He loved the old law supremely. He studied it ardently and continually, and made himself thoroughly master of all its principles. \* \* \* No lawyer in Westminster Hall was superior to him, and had he lived in England, we should have seen him not only in the front rank of English lawyers, but Chief Justice of the Kingdom."

—*2 Life and Letters, pp. 974-9.*

## PLACED MADISON BEFORE JEFFERSON

"I entirely concur with you in your estimate of Mr. Madison,—his private virtues, his extraordinary talents, his comprehensive and statesman-like views. To him and Hamilton I think we are mainly indebted for the Constitution of the United States, and in wisdom I have long been accustomed to place him before Jefferson."

—*Letter to Hon. Ezekiel Bacon, Cambridge, Mass., Apr. 30, 1842.*



## GIBBON'S "DECLINE AND FALL OF THE ROMAN EMPIRE"

"There is not, perhaps, a single library in America sufficiently copious to have enabled Gibbon to verify the authorities for his immortal 'History of the Decline and Fall of the Roman Empire.'"

—*Miscellaneous Writings*, p. 372.

## WHEN A WORK IS USEFUL

"There are many employments whose chief object seems little connected with any great ultimate benefit, which yet administer widely, though indirectly, to the substantial good of society. There are many studies which seem remote from any direct utility which yet, like the thousand hidden springs which form the sources of the streams of rivers, pour in their contributions to augment the constantly increasing current of public wealth and happiness. We must not, therefore, when we examine an art, or an invention, a book, or a building, a study, or a curiosity, measure its value by a narrow rule. We must not ask ourselves, whether we could do without it; whether it be indispensable to our wants; or whether though missed, it could not be spared. But the true question in such cases ought to be whether, in the actual structure of society, it gratifies a reasonable desire, imparts an innocent pleasure, strengthens a moral feeling, elevates a single virtue, or chastens or refines the varied intercourse of life. If it does, it is still useful in the truest sense of the term, although it may not seem directly to feed the hungry, cure the sick, administer consolation to the afflicted, or even remove the irksome doubt of a poor litigant, groping blindfold through the dark passage of the law."—*Miscellaneous Writings*, p. 476.

## GENIUS

"Genius and talent are limited to no rank or condition of life. They have been distributed by the bounty of Providence, with an equal hand through every class of society. They are among those gifts which poverty cannot destroy, or wealth confer; which spring up in the midst of discouragements and difficulties, and like the power of steam, acquire new elasticity by pressure; which ripen in the silence of solitude, as well as in the crowded walks of society; which the cottage may nourish into a more healthy strength than even the palace or the throne. The most formidable enemy of genius is not labor, but indolence; want of interest and excitement; want of motive to warm, and of object to accomplish; ignorance of means leading to indifference to ends. Hence it is that the very highest and the very lowest orders of society often represent the same mental phenomena—a fixed and languishing disease of the intellectual powers, where curiosity wastes itself in trifles, and a cold listlessness, brooding over the thoughts, lets fall a preternatural stupor. Their misfortune is that so beautifully touched by the poet Gray.

"'But knowledge to their eyes the ample page, rich with the spoils of time, did ne'er unroll.'"—*Miscellaneous Writings*, p. 547.

## ARISTOTLE AND CICERO

"The works of Aristotle and Cicero have probably furnished more materials for instruction upon all the topics, of which they treat, than those of any other authors who have flourished before or since their times."—*Miscellaneous Writings*, 770.



## LORD STOWELL

"The world is more indebted to Lord Stowell for a practical exposition of the law of Nations upon the eternal principles of justice and reason than to all the jurists of all former times, and in various attainments he was exceeded by few, and his knowledge of general jurisprudence was greater than any man of his day."—*Miscellaneous Writings*, 821.

## THE LAW

"The law is a profession whose general principles enlighten and enlarge, but whose minutiae contract and distract the mind."

—*Letter to S. P. P. Fay, Sep., 1798.*

## THE VALUE OF AN INDEX

"The value of an accurate index is well known to those who have frequent occasion to consult voluminous works in any science, and to construct a good one requires great patience, labor and skill."

—*N. A. Review*, vol. 23, p. 39.

## JUDGE STORY'S LABORS

According to his biography, carefully prepared by his son, W. W. Story, Judge Story delivered 13 volumes of Circuit Court decisions, had a large share in 35 volumes of Supreme Court decisions, prepared 13 volumes of legal treatises, besides discourses, essays in the *North American Review*, drew up many important acts of Congress, such as the Judiciary and Crimes act, and discharged the duties of law professor with regularity and success for 16 years in Harvard and many years president of a Salem bank. Wrote more works on jurisprudence than any other writer of his time, leading Judge William Prescott, one of the leading lawyers of Mass., to say: "I believe him the greatest jurist now living in either country," (in a letter to Chas. Sumner, in 1840); and "made the dry rod of the law bud and blossom in his hands," said his son; he himself thought his three greatest constitutional opinions were the Charles River Bridge Case, the Dartmouth College Case, and *Hunter v. Martin*.

"During the period occupied in writing of his Commentaries on the Constitution," says his son, three months of his time had been spent in attendance on the Supreme Court, at Washington, where he had borne his full share in preparing the judgments of the Court; he had also attended all the circuits in Maine, New Hampshire, Rhode Island, and Massachusetts, and written the opinions of that year, (1831); reported in the 1st volume of Sumner's Reports; he had corrected and printed his Commentaries on Bailments, carefully examining every proof and revise; he had lectured from two to three hours in the Law School every other day while he was at Cambridge; he had attended at the moot-courts; and besides all this, he had written the address at the Commemoration of Mount Auburn, the notice of Chief Justice Parker's death, had conducted an extensive correspondence, and had been ill nearly a month."

—*W. W. Story—2 Life and Letters*, p. 106.

## STORY NOT ACCURATE

And yet says John William Wallace, Reporter of the Supreme Court of the U. S., in a letter to Hampton L. Carson, of Philadelphia, Jan., 1876; "His powers of synthesis were considerable; but when you have heard his opinions and text-books dissected by analytical men at the bar as often as I have, you will come to the conclusion that his mind was deficient in accuracy, that its discipline was not strict, nor its investi-



gations patient. His reputation, which was in good degree a reflected one from England, where he took great pains to make himself known; has not, I think, stood firm in the professional mind of this day. And I much doubt whether he had any accurate knowledge of the civil law."

And John M. Shirley, in his "Dartmouth College Causes," p. 330, writes: "Whole chapters of some of his law books seem to be little more than windrows of head-notes, raked together as the farmer rakes hay in the mow-field; but when we survey the ground, the wonder is that his work was so well performed. His opinions will probably stand higher in the hereafter than his text-books, except his work on "The Conflict of Laws," and the commentaries on the "Constitution."

In this connection, Prof. William Matthews in his "Words. Their Uses and Abuses," p. 252, states: "Being once employed by Congress to draft an important law, Judge Story spent six months in trying to perfect its phraseology, so that its sense would be clear beyond the shadow of a doubt. Yet in less than a year, having heard the arguments of two able attorneys in a suit which came before him as a Judge of the U. S. Supreme Court, he was utterly at a loss to decide the meaning of the statute."

### DIFFICULTY OF COKE ON LITTLETON

"I shall never forget the time when having read through Blackstone's Commentaries, Mr. Sewell, on his departure for Washington, directed me to read Coke on Littleton, as the appropriate succeeding study. It was a very large folio, with Hargrave and Buller's notes, which I was required to read also. Soon after his departure I took it up. I set myself down and wept bitterly. My tears dropped upon the book, and stained its pages. It was but a momentary irresolution. I went on and on, and began at last to see delight, aye, and to feel that I could comprehend and reason upon the text and the comments. When I had completed the reading of this most formidable work, I felt that I breathed a purer air, and that I had acquired a new power. The critical period was passed: I no longer hesitated."—*Life and Letters*, vol. 1, p. 74.

"While I am compelled to creep from point to headland, Marshall puts out to sea."—*Jos. Story*.

### JOSEPH STORY ON THEORY AND PRACTICE

"There is in the public mind a strong disposition to turn everything to a practical account; to deal less with learning and more with experiment; to seek the solid comforts of opulence rather than the indulgence of mere intellectual luxury. On the other hand, from the materials as well as of critical skill, high scholarship is a prize of no easy attainment, and when obtained, it slowly receives public favor and still more slowly reaches the certainty of wealth. Indeed, it is often combined with a contemplative shyness and sense of personal independence which yield little to policy, and with difficulty brook opposition. The honors of the world rarely cluster round it; and it cherishes with most enthusiasm those feelings which the active pursuits of life necessarily impair, if they do not wholly extinguish. The devotion to it, therefore, where it exists, often becomes an exclusive passion; and thus the gratification of it becomes the end instead of the means of life. Instances of extraordinary success by mere scholarship are more rare than in other professions. It is not then to be wondered at that the prudence of some minds and the ambition of others should shrink from labors which demand days and nights of study and hold out rewards which are distinct, or pleasures which are, for the most part, purely intellectual."—*Story's 'Miscellaneous Writings,'* 361.



LORD STOWELL, WILLIAM SCOTT, (1745-1836)  
England

REASON OF THE LAW, RATHER THAN PRECEDENT

"I have rather thought, that in the jurisdiction of the admiralty, I am to look to the real justice of the case, and not what has been pronounced in a somewhat similar case by a decision of a single judge of the common law. I rather think we are too fond of cases; when a matter is to be argued, we look immediately for the cases, and by them we are determined more than, perhaps, by the real justice that belongs to the question; this may enforce the uniformity of the law, which is certainly a very desirable purpose that ought to be considered; for if the judgment be erroneous, it is but an indifferent exposition of the law."

—*From a letter to Judge Joseph Story, May, 1828.*

PRIZE SHIPS

"In all cases of capture, it is the first duty to bring in the prize to port for adjudication. If impossible to bring it in, the next duty is to destroy the enemy's property. Where it is doubtful whether it is the enemy's property, and impossible to bring it in, no such obligation arises, and the safe and proper course is to dismiss. When it is neutral, the act of destruction can not be justified to the neutral owner by the gravest importance of such an act to the public service of the captor's own state; to the neutral it can only be justified under any such circumstances, by a full restitution in value. These are rules so clear in principles and established in practice that they require neither reasoning nor precedent to illustrate or support them."

—*Lord Stowell—in the Felicity, 2 Dodson, 381, (1819).*

VALID MARRIAGE

"While the English decisions have established the rule that a foreign marriage, valid according to the law of the place where celebrated, it is good everywhere else, they have no *a converso* established that marriage of British subjects, not good according to the general law of the place where celebrated, are universally to be regarded as invalid in England."

—*From Reading v. Smith, 2 Haggard, 371.*

HUMANITY AND JUSTICE

"Humanity is the second virtue of the Courts, but undoubtedly the first is justice."—*Evans v. Evans, 1 Haggard, 35.*

THE LAW HAS NO LOCALITY

"The seat of judicial authority is locally here in the belligerent country, according to the known law and practice of nations, but the law itself has no locality. It is the duty of the judge sitting in an admiralty court not to deliver occasional and shifting opinions to serve present purposes and particular national interests, but to administer with indifference that justice which the law of nations holds out without distinction to independent States, some happening to be neutral, and some belligerent."

—*In the Maria, 1 C. Rob., 350.*



## THE MARRIAGE CONTRACT

"The marriage contract *depraesendi* does not require consummation in order to become very matrimony; that it does *ipso facto jure* constitute the relation of man and wife."—*Dalrymple v. Dalrymple*, 2 *Haggard*, 54.

## TRADING WITH THE ENEMY

"All trading with the public enemy unless with the permission of the sovereign is interdicted. \* \* \* A State in which contracts cannot be enforced cannot be a State of legal commerce."

—*The Hoop*. 1 *C. Rob.*, 196, (1799).

## DOMICIL

"Time is the great ingredient in constituting domicil. \* \* \* be the occupation which it may, it cannot happen but with few exceptions that a mere length of time shall not constitute a domicil. \* \* \* 'The character that is gained by residence ceases by residence; it is an adventitious character which no longer adheres to him (the merchant) from the moment that he put himself in motion *bona fide* to quit the country *sine animo revertendi*.'"—*The Harmony*, 2 *C. Rob.* 322.

## ELDON AND STOWELL, COMPARED

John Scott (Lord Eldon) and William Scott (Lord Stowell), who were brothers, the latter six years older than the former, are here compared.

"Could Eldon have combined with his own stores of professional learning, his brother, Lord Stowell's profound knowledge of the Civil Law and Cannon Law, of the Law of Nations, and of the Codes of the Continental States, he would have been the most accomplished judge who ever sat on any British tribunal. But while he was reading Coke upon Littleton over and over again, and becoming thoroughly versed in all the doctrines laid down by Chief Justices and Chancellors in Westminster Hall, we are not told that he ever dipped into the Code, the Pandects, or the Institutes of Justinian; or that he found any pleasure in Puffendorf or Grotius, or that he ever formed the slightest acquaintance with D'Agusseau or Pothier. Nor, in any of his arguments at the bar, or judgments from the bench, does he, so far as I am aware, ever refer to the civil law, or any foreign writer, or authority, by way of illustration."

—*Campbell's 7 Lord Chancellors*, 619.

## A GREAT SCHOLAR AND ADMIRALTY JUDGE

"Lord Stowell was a great scholar who had been the boast of Oxford, a great wit who had been the honored companion of Dr. Samuel Johnson, a great judge, or rather legislator, the author of a code of international law, which defines the rights and duties of belligerents and neutrals, and which is respected over the whole civilized world. (7 *Ld. Chan.*, 596.) His judgments in the Court of Admiralty have conferred a lasting obligation on his country, and his elegant accomplishments and delightful social qualities have endeared him to a large circle of private friends."

—7 *Campbell's Ld. Chan.*, 385.

## NORMAN BENTWICK ON ELDON AND STOWELL

"In the annals of English law there is no other instance of two brothers attaining such a high place as did William Scott and John Scott, who came to be known as Lord Stowell and Lord Eldon. Their excellences were



different; the elder was pre-eminent in counsel, the younger in advocacy; the one was supreme as jurist, the other as statesman. Each occupied a most distinguished position on the Bench—the one as the head of the Civil Law and Law of Nations, was distinguished; and if Lord Eldon figured more prominently in the life of his own time, his brother left a greater name in the record of jurisprudence. Before his day England had not, perhaps, produced any supreme jurists, who by his writings, marked a new development of the Law of Nations, unless we place in this class Richard Zouche; and it was fitting that the great contribution to International Law in a country which had always excelled in practice rather than in theory should be made by a practical, and not by a theoretical exponent. Lord Stowell made the law of prize in administering it, as Mansfield and Holt had made the law merchant on the Bench. He did, in fact, for the law of commerce in war what they had done for it in peace—established its rules in a clear and broad basis. But, while Holt and Mansfield's work had validity only for the people of their country, much of Lord Stowell's obtained the respect of the community of nations. The judgments that he gave were the 'living voice of the *jus gentium*.'"—*Norman Bentwick, in 'Great Jurists of the World.'* 517.

### THE TRUTH

"The truth may not always be discernible, but when it is discovered it is according to the truth and not according to the fiction that we are to give to the transaction its character and denomination. If the voyage from the place of landing be not really ended, it matter not by what acts the party may have evinced his desire of making it appear to have ended."—*The William, No. 2, 5 C. Rob., 585.*

Lord Stowell vacated office at 83, while his vigor was still unimpaired. He died in 1836 in his 91st year, the same year in which James Madison died, leaving a quarter of a million in personalty, and considerable real estate. Though a *bon vivant*, he had been saving to a point of meanness throughout his life, and he loved, as he put it—"the elegant simplicity of the three per cents." "John Scott, will take any *given* quantity of wine," was remarked of him by a clerical wit, who noted that he drank more when dining out than at home. Coleridge in his "Table-Talk" recommended to all statesmen the perusal of Puffendorf, Grotius, Dynkersock, Vattel and Wolf, the reports of Dr. Robinson (in which Stowell's decisions are reported); and the verdict of later generations has confirmed for Lord Stowell the place which the contemporary poet and philosopher assigned to him, as the finest exponent in practice of the law regulating the rights of the belligerents and neutrals in war upon the high seas. And all the violence and unwarrantable pretensions of the time, advanced by his own country as well as by Napoleon, he held aloft the standard of fairness towards neutrals, enforcing the established law with exactitude and severity, but cutting at the roots of innovation; never countenancing oppressive fictions. In the stress of war his judgments were impugned by some American judges, but his vindication came upon maturer consideration; as one of them wrote to him later: "On a calm review of your decisions, after a lapse of years, I am bound to confess my entire conviction both of their accuracy and equity."



## SIR EDWARD SUGDEN, LORD ST. LEONARDS (1781-1875), England

### HOW TO READ LAW

"I resolved, when beginning to read law, to make everything I acquired perfectly my own, and never to do a second thing until I had entirely accomplished the first. Many of my competitors read as much in a day as I read in a week; but at the end of twelve months my knowledge was as fresh as on the day it was acquired, while theirs had glided away from their recollection."—*Sir Edward Sugden (Lord St. Leonards)*.

### SUGDEN AND SCARLETT

"Denman's professional emoluments at the bar, though lately considerable, had never been on the same scale as those of Scarlett and Sugden (who was a great chancery practitioner), and several others of the leading contemporaries, and they were then absorbed by the expenses incident to a numerous family, and a style of living which without being profuse, was generous and liberal."—6 *Lives of the Chief Justices*, 7-8.

### HIS CAREER

After practicing for some years as a conveyancer, he was called to the bar at Lincoln's Inn, in 1807, having already published his well-known treatise, the "Law of Vendors and Purchasers," (14th ed., 1862). In 1822 he was made king's counsel and chosen a bencher of Lincoln's Inn. He was returned at different times for various burroughs to the House of Commons, where he made himself prominent by his opposition to the Reform Bill of 1832; solicitor-general, 1829; Lord Chancellor of Ireland, 1834, and again 1841-6; Lord Chancellor, 1852, and raised to the peerage as Lord St. Leonards. He died at Boyle Farm, Thames Ditton, 29 Jan., 1875. After his death his will was missing, but his daughter, Charlotte Sugden, was able to recollect the contents of a most intricate document, and in the action of *Sugden v. St. Leonards* (L. R., 1 P. D., 154) the Court accepted her evidence and granted probate of a paper propounded as containing the provisions of the last will. This decision established the proposition that the contents of a lost will may be proved by secondary evidence, even of a single witness.

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### MASON'S LONG TRAINING AS A JURY LAWYER

"Mason's long training as a jury lawyer made him especially particular about the facts or evidence of any case, even when he was only asked for his opinion upon it. A distinguished member of the bar once told us that he had been sent back by him as many as three times to find out what some minute facts were in a case in which Mr. Mason's opinion was sought, before he would get any opinion whatever. And it is to be regretted that in this respect his example is not more generally followed; for there can be no doubt that there is a good deal of litigation caused by favorable legal opinions given in cases imperfectly stated, if all the facts were known, no suit would be advised or begun."

—*C. J. Hill's Art. 'Mason,' 12 American Law Review, 224-5 (Jan., 1878)*.



## CHARLES SUMNER (1811-1874), Massachusetts

### JUDICIAL TRIBUNALS

"Let me here say that I hold judges, and especially the Supreme Court of the country, in much respect; but I am too familiar with the history of judicial proceedings to regard them with any superstitious reverence. Judges are but men, and in all ages have shown a full share of frailty. Alas! alas! the worst crimes of history have been perpetrated under their sanction. The blood of martyrs and of patriots, crying from the ground, summons them to judgment.

"It was a judicial tribunal which condemned Socrates to drink the fatal hemlock, and which pushed the Savior barefoot over the pavements of Jerusalem, bending beneath the cross. It was a judicial tribunal which, against the testimony and entreaties of her father, surrendered the fair Virginia as a slave; which arrested the teachings of the great apostle of the Gentiles, and sent him in bonds from Judea to Rome; which, in the name of the *old* religion, adjudged the saints and fathers of the Christian Church to death, in all its most dreadful forms; and, which afterwards in the name of the *new* religion, enforced the tortures of the Inquisition, amidst the shrieks and agonies of its victims, while it compelled Galileo to declare, in solemn denial of the great truth he had disclosed, that the earth did not move round the sun.

"It was a judicial tribunal, which, in France, during the long reign of her monarchs, lent itself to be the instrument of every tyranny, as during the brief reign of terror it did not hesitate to stand forth the un pitying accessory of the unpitying guillotine. Ay, sir, it was a judicial tribunal in England, surrounded by all the forms of the law, which sanctioned every despotic caprice of Henry the Eighth, from the unjust divorce of his queen to the beheading of Sir. Thomas More; which lighted the fires of persecution, that glowed at Oxford and Smithfield, over the cinders of Latimer, Ridley, and John Rogers; which after elaborate argument, upheld the fatal tyranny of ship money against the patriotic resistance of Hampden; which, in defiance of justice and humanity, sent Sidney and Russell to the block; which persistently enforced the laws of conformity that our Puritan Fathers persistently refused to obey; and which afterwards, with Jeffries on the bench, crimsoned the pages of English history with massacre and murder—even with the blood of innocent women.

"Ay, sir, and it was a judicial tribunal in *our* country, surprised by all the forms of law, which hung witches at Salem, which affirmed the constitutionality of the Stamp Act, while it admonished 'jurors and the people' to obey; and which now, in our day, has lent its sanction to the unutterable atrocity of the Fugitive Slave Bill."

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### THEOPHILUS PARSONS—THE MOST PROFOUND LAWYER IN MASSACHUSETTS

"Of all the lawyers in Massachusetts, the most profound in learning and weighty argument, both at the bar and on the bench was Theophilus Parsons. \* \* \* His early success was as a master of prize and admiralty law, 'of which,' writes his son, 'few lawyers then knew anything.' 'In fact he had almost the monopoly of it and it was very profitable. The late Governor Sullivan, Judge Lowell and my father were the only practicing lawyers who had much knowledge of it—my mother used to speak of the 'prize times' as the most profitable which we had ever known.' "

—Warren's *History of the American Bar*, 32.



## NOAH H. SWAYNE (1804-1884), Ohio

### THE INTENTION OF THE LAW

“A thing may be within the letter of a statute, and not within its meaning; and within its meaning though not within its letter. The intention of the law-maker is the law. (As a leech was prosecuted in Bologna, under a law decreeing that ‘whoever drew blood in the streets should be punished with the utmost severity’, and Plowden cites an old statute of Edward II, enacting that a prisoner ‘who breaks jail shall be guilty of a felony’ but does not extend to a prisoner who breaks out when the prison is on fire, ‘for he is not to be hanged because he would not stay to be burned.’”—*Cited by Frederic R. Coudert in ‘Certainty and Justice’ 161-2.*

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### BELVA LOCKWOOD’S PRACTICAL WORDS

“First, be thoroughly well prepared by study for your entrance into the profession, and do not allow unnecessary haste to begin to induce you to launch out into practice without the necessary qualifications; but after such painstaking study you will learn daily that you need to know more, and you will find as you proceed that each case presents a new aspect as to facts, and requires the bringing into use of some new maxims of the law not hitherto required. While you will not be expected to know everything, and will have always handy many books of ready reference with which you are familiar, you will be expected to have at your tongue’s end the common remedies of the law, the forum in which the suit is to be brought and the general drift of the law controlling it. Above all, you should receive a thorough literary, and if not a classical, certainly a scientific course of study before you begin the study of law at all.

“Second, you should study not only the forms of practice which are usually to be learned outside of court. Familiarize yourself with the forum in which you are to practice by observing for a portion of each day the manner of presenting cases by older members of the bar, conciliate their good graces, acquaint yourself with the personnel of the court, study its temper somewhat, and prepare your maiden case with great care. Speak distinctly, write clearly, have your papers neatly drawn and ready for the signature of the court without unnecessary delay. Do not attempt to take any unfair advantage of your adversary—treat him kindly, courteously—be respectful to the court, do not browbeat or attempt to warp the testimony of witnesses, nor on any account lose your temper or uniform gentlemanly bearing.

“Third, how are you to get practice? Begin at the lowest round of the ladder, and accept the first case presented that appears to need adjudication by the usual process of the law. If you should take it upon you to redress the wrongs of some poor woman or man who has nothing to pay, or if the court should, as it often does, appoint you to defend in open court a pauper case, put forth your best efforts, for herein may lie your future reputation. It will certainly give you experience, which the young lawyer most needs. In an active practice of seventeen years, surrounded by the competition of distinguished lawyers in every branch of the profession, and constantly doing something along all of these lines of legal work, my table has constantly been loaded with good paying business; but I never turn any man or woman away who has a good case because he or she has no money. All classes of business have their risk, and the law is no exception.”—*Letter to N. Y. Herald, March 8, 1891.*



WM. H. TAFT (1857- ), Ohio

### TRIBUTE TO THE IRISH

"There has been an easy amalgamation of the Irish with our American life. They have added much to the composite American made from various European stocks. They have softened the American wit. They have added to American tenderness. They have increased the good fellowship, added to our social grace, increased poetical imagination, made us more optimistic and added to our sunny philosophy."

Graduate from Yale University at 21; Assistant Prosecuting Attorney of Hamilton Co., O., 1881-2; practiced law, 1883-7; Justice Superior Court of O., 1887-90; Solicitor General U. S., 1892-4; Judge 6th U. S. Circuit Court, 1894-1900; President of the Phillippine Archipelago, 1901-3; Secretary of War, under Roosevelt, 1904-8; President U. S., 1909-13 Now Chief Justice of the U. S., upon the appointment of Pres. Harding, 1921.—*The Author.*

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### JEREMIAH MASON'S "OPINION BOOKS"

There are three volumes of Mr. Mason's "opinions," some eighty in all, given after he moved to Boston. The first was in September, 1832 (the year he moved to Boston), the last in April, 1847 (one year before he died), all copied into the books in his own hand-writing. They are now in the Harvard Law-School Library. John Chipman Gray, of Harvard, says: "Any idea that Mr. Mason was merely a successful jury advocate would be dispelled by reading in these volumes. For accurate statement of the facts, for careful consideration of their every aspect, for apt citation of authorities, and for clear declaration of the result reached, they are models."—*The Author.*

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### MOST FAMOUS FOR PUTTING IN EVIDENCE

Mr. Mason was most famous for his sagacity in putting in evidence, and conducting of the cause independently of the argument, and especially for his skill in cross-examining witnesses. In this dangerous duty he was greatly assisted not only by his natural shrewdness, but by his knowledge of men and his wide experience of life. His detection of the truth or falsehood of a story related on the witness-stand is said to have been wonderfully accurate and often to have astounded experienced judges and lawyers. 'One of the stories, current in my young days,' says Geo. S. Hillard, 'was about his unfrocking and demolishing a man who, to give more effect to his false testimony, had arrayed himself for the nonce in the garb of a Quaker. It was long remembered in the region where it happened as an exciting scene; amusing, at least, to every one but the victim.'—*The Author.*



## SIR THOMAS N. TALFOURD (1795-1854), England

### THE EPHEMERAL CAREER OF A LAWYER

After reviewing Wm. Follett's professional career, Talfourd, his friend, in his "Vacation Rambles," usually pronounced so brilliant, mournfully inquires:

"What remains? A name dear to the affections of a few friends; a waning image of a modest and earnest speaker, decidedly at the head of the common law bar; and the splendid example of a success embodied in a fortune of \$1,000,000, acquired in ten years, the labors of which hastened the extinction of his life; these are all the world possesses of Sir Wm. Follett. To mankind, to his country, to his profession, he left nothing; not a measure conceived, not a danger averted, not a principle vindicated; not a speech intrinsically worth preservation; not a striking image, nor an affecting sentiment; in his death the power of mortality is supreme. How strange, how sadly strange, that a course so splendid should end in darkness so obscure."—*English Judge and Author.*

### THE BEST MEDICINE

"Gaiety and a light heart, in all virtue and decorum, are the best medicine for the young, or rather for all. Solitude and melancholy are poison; they are deadly to all, and above all to the young."

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### AARON BURR

"Of all the men who have reached the Vice-Presidency of the United States, save and except Thomas Jefferson alone, Aaron Burr is easily the most fascinating and most brilliant. He discharged the onerous duties of that exalted station—as indeed he did those of every position he ever held—with grace, tact and signal ability. The Vice-Presidency was a theatre peculiarly suited for the display of his shining talents; and notwithstanding the odium which clusters about his name, the traditions of the Senate still rank him foremost among its presiding officers. \* \* \* It is generally assumed that Burr's downfall dates from Weehawken, July 11, 1804, when and where he killed Alexander Hamilton, in the most celebrated duel of modern times. \* \* \* One man at least, the Rev. Eliphalet Nott, of Albany, laid the foundation of a princely fortune and great career by shooting off a sky-rocket of prodigious size and portentous splendor on that occasion—his funeral oration on Hamilton. \* \* \* Indeed, the Reverend gentleman was not the only man whose fortune Burr unintentionally made as an orator. He was the cause of William Wirt's delivering the Blennerhasset speech—who of us does not know it by heart? Mrs. Blennerhasset, freezing tears, wintry winds, garden, river, ice, Shenstone shrubbery, philosophic apparatus, sun, moon, stars and all—the most spectacular piece of rhetoric in the English language, Phillip's wonderful rhapsody on Napoleon alone excepted."

—*Champ Clark's Lecture, delivered in various southern cities.*



ROGER B. TANEY (1777 1864), Maryland

NO STATE HAS THE RIGHT TO PROHIBIT THE INTRODUCTION OF ARDENT SPIRITS AND DISTILLED LIQUORS BECAUSE OF INTER-STATE COMMERCE

"It has indeed been suggested that if a state deems the traffic in ardent spirits to be injurious to its citizens, and calculated to introduce immorality, vice and pauperism into the state, it may constitutionally refuse to permit its importation, notwithstanding the laws of Congress; that a state may do this upon the same principles that it may resist and prevent the introduction of disease, pestilence and pauperism from abroad. But it must be remembered that disease, pestilence and pauperism are not the subjects of commerce, although sometimes among its attendant evils. They are not things to be regulated and trafficked in, but to be prevented as far as human foresight or human means can guard against them.

"But spirits and distilled liquors are universally adapted to be subjects of ownership and property, and are therefore subjects of exchange, barter and traffic, like any other commodity in which a right of property exists, and inasmuch as the laws of Congress authorize their importation no state has a right to prohibit their introduction."

—*In Thurlow v. Massachusetts*, 5 Howard, 576.

Appointed Chief-Justice of the U. S., 1836.

Says Hampton L. Carson, in his History of the Supreme Court of the U. S., p. 291: "In knowledge of technical details in all departments of legal learning, in the mastery of principles derived from constant and varied occupation in the argument of causes in Courts of inferior and superior jurisdiction, both State and national, he excelled every one of his predecessors."

He was Chief-Justice of the U. S. Supreme Court for 27 years, being unable because of ill-health to sit on the bench in 1863, a year before his death.

WHO WERE CITIZENS AT THE ADOPTION OF THE CONSTITUTION OF THE U. S.

"It is difficult at this day to realize the state of public opinion in relation to that unfortunate race which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.

"They had for more than a century before been regarded as beings of inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no right which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic whenever a profit could be made of it. And to no nation was this opinion more firmly fixed or more uniformly acted upon than by the



English Government and English people. They not only seized them on the coast of Africa, and sold them in slavery, but they took them as ordinary articles of merchandise to every country where they could make a profit in them and were far more extensively engaged in this commerce than any other nation in the world.

"The opinion thus entertained and acted upon in England was naturally impressed upon the colonies they founded on this side of the Atlantic. And accordingly, a negro of the African race was regarded by them as an article of property and held, and bought and sold as such, in every one of the thirteen colonies which united in the Declaration of Independence, and afterwards formed the Constitution of the U. S. \* \* \*

The legislation of the different colonies furnishes positive and indisputable proof of this fact. \* \* \* The language of the Declaration of Independence is equally conclusive. \* \* \* It is too clear for dispute that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration; for if the language (all men are created equal, that they are endowed by their Creator with certain inalienable rights; that among them is life, liberty, etc.,) as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted."—*In Dred Scott v. Stanford*, 19 Howard, 404.

#### SLAVERY DENOUNCED—SPEECH

"There is no law which forbids us to speak of slavery as we think of it. Any man has the right to publish his opinion on that subject whenever he pleases. Mr. Gruber did quote the language of our great act of national independence, and insisted on the principles contained in that venerated instrument. He did rebuke masters, who, in the exercise of power, are deaf to the calls of humanity, and he warned them of the evils they might bring upon themselves. He did speak with abhorrence of those reptiles who live by trading in human flesh, and enrich themselves by tearing the husband from the wife, the infant from the bosom of the mother, and this, I am instructed, was the head and front of his offending. Shall I content myself with saying he had a right to say this? That there is no law to punish him? So far is he from being the object of punishment in any form of proceeding that we are prepared to maintain the same principles, and to use if necessary the same language here, in the temple of justice and in the presence of those who are the ministers of the law. A hard necessity, indeed, compels us to endure the evils of slavery for a time. It was imposed upon us by another nation, while we were yet in a state of colonial vassalage. It cannot be easily or suddenly removed. Yet, while it continues, it is a blot on our national character, and every real lover of freedom confidently hopes that it will effectually, though it must be gradually, wiped away, and earnestly looks for the news by which this necessary object may be best attained."

—*From speech in defense of Mr. Gruber, a Methodist minister from Pa., indicted for inciting slaves to insurrection, 'Gt. Am. Lawyers,' vol. 4, 92-3.*

#### SCOTT V. SANDFORD

Taney held in this noted case:

1. That Scott, being a negro whose ancestors were brought to this country and sold as slaves, even though he were free, was not a "citizen" within the meaning of the Constitution, hence the Circuit Court of the U. S., in Missouri, had no jurisdiction.

2. That Scott's removal to Ft. Snelling (now Minnesota), then part of Louisiana Territory, free territory, did not set him free because the Missouri Compromise was unconstitutional and void.



3. That under the 5th Amendment of the Constitution "no person shall be deprived of life, liberty or property without due process of law;" and, therefore, Sandford could not be deprived of his property (the negro).

### JUDGE CURTIS'S DISSENTING OPINION

"The dissenting opinion of Mr. Justice Curtis has been thought to furnish a complete answer to the argument of Chief Justice Taney on the 'citizen' point of the case. The writer believes that Mr. Justice Curtis utterly failed to capture the citadel of Taney's position, and barely succeeded by brilliant diversions in demolishing a few unimportant out-works. The main positions he not only leaves untouched but only makes a skillful and misleading feint of attacking."

—*Wm. E. Mickell, Professor of Law, University of Pa., under 'Roger B. Taney,' Great American Lawyers, vol. 4, 157-8. (Judge Curtis said of Judge Taney: "His power of subtle analysis exceeded that of any man I ever knew.")*

### OPINION OF GEROGE TICKNOR CURTIS

"Chief Justice Taney was, indeed, a great magistrate, and a man of singular purity of life and character. \* \* \* If he had never done anything else that was high and heroic, and important, his noble vindication of the writ of *habeas corpus*, and of the dignity and authority of his office, against a rash minister of State, who, in the pride of a fancied executive power came near to the commission of a great crime, will commend the admiration and gratitude of every lover of constitutional liberty, so long as our institutions shall endure." Reference is here made to the case of John Merriam, a citizen, who in 1861, was imprisoned in Ft. McHenry, near Baltimore, by a military order; and in whose case the writ of the Chief Justice of the U. S. was refused entrance into the fort, upon the excuse that the President had suspended the writ of *habeas corpus*.—1 *Memoirs of Benj. R. Curtis*, 240.

### CURTIS'S TRIBUTE TO JUDGE TANNEY

"I have been long enough at the bar to remember Mr. Taney's appointment; and I believe it was then a general impression in this part of the country that he was neither a learned, nor a profound lawyer. This was certainly a mistake. His mind was thoroughly imbued with the rules of the common law and of equity law; and when I first knew him he was master of all that peculiar jurisprudence which is the special providence of the courts of the United States to administer and apply. His skill in applying it was of the highest order. His power of subtle analysis exceeded that of any man I ever knew. \* \* \* In his case, balanced and checked by excellent common sense and by great experience in practical business, both public and private. It is certainly true, and I am happy to be able to bear direct testimony to it, that the surpassing ability of the Chief Justice, and all the great qualities of character and mind, were more fully and constantly exhibited in the consultation room, while presiding over and assisting the deliberations of his brethren than the public knew or can ever justly estimate. \* \* \* There, his dignity, his love of order, his gentleness, his discrimination, were of incalculable importance. The real intrinsic character of the tribunal was greatly influenced by them, and always for the better."

—*Before the Bar of the 1st. U. S. Circuit Court, Boston, Oct. 17, 1864, upon the death of Chief Justice Taney: Warren's 'Hist. Am. Bar,' 421-2.*



## LORD EDWARD THURLOW (1732-1806), England

### FOR THE ESTABLISHED CHURCH

"Gentlemen, I'm against you by G——. I am for the Established Church, d—— me! Not that I have any more regard for the Established Church than for any other church, but because it *is* established. And if you can get your d——d religion established, I'll be for that too."

—*To a deputation of distinguished men who waited on Lord Chancellor Thurlow to secure his support in their attempt to obtain the repeal of the Corporation and Test Act, 1788.*

### HOW TO SUCCEED AT THE BAR

"Let your son spend his own fortune, marry and spend his wife's, and then go to the bar; there will be little fear of his failure."

—*Thurlow's advice to the father who wished his son to study law.*

### PITT'S CHARACTERIZATION

"Thurlow; while in the Privy Council, proposed nothing, opposed nothing and acquiesced in anything."

### THURLOW'S COMMENT ON PITT, AT HIS DEATH

"A d——d good hand at turning a period."

### THE BARMAID'S BABY

Lord Thurlow, while at the bar, met a barrister one morning who accosted him with,

"Oh! I am told that the barmaid at Nando's has a little baby?"

"What the d——l is that to *me*?"

"But," pursued the barrister, "I hear the child is yours."

"Then, what the d——l is that to *you*?"

### AT SEVENTY-FOUR

"Standing here we can see his prodigious bushy eyebrows, that are as white as driven snow, and under them we can see that large black eyes, beneath the angry fierceness of which hundreds of proud British peers, assembled in their council-chamber, have trembled like so many whipped school-boys. There is no luster in them now, and their habitual expression is one of weariness and profound indifference to the world, a look that is deeply pathetic and depressing, until some transient cause of irritation of the words of a sprightly talker rouse him into animation. But the most notable quality of his face is its look of extreme age. Though only seventy-four, he looks a hundred."

—*'Stories About Lawyers,' 220.*

### GEORGE BANCROFT ON THURLOW

"Thurlow had a coarse nature and bad heart; was strangely profane in language, and reckless of morals and of decorum in domestic life. He enjoyed the credit of being fearless of the aristocracy, because his



manners were rough; but no man was more subservient to their interests. Lord North governed himself on questions of law by his advice; and Thurlow proved the evil genius of that minister and of England. Toward America no man was more unrelenting.”—3 *Bancroft's U. S. Hist.*, 384.

### HOW HE DISPATCHED BUSINESS

Lord Thurlow was asked how he got through all his business as Chancellor; his answer was: “Just as a pickpocket gets through a horse-pond: he *must* get through.”—1 *Twiss's Eldon*, 280.

### SURGEON AND BUTCHER IN SAME CLASS

At Buxton, Thurlow lodged with a surgeon and apothecary, opposite to whose house there was a butcher's shop. He asked his landlord “whether he or his neighbor killed the most.”

### EVIDENCE OF DEATH

“Upon the death of a tenant for life, who had been entitled to the interest of a sum of money in court, the attorney applied to have the fund taken out of court, on behalf of an individual who had become entitled to the principal. Thurlow interposed, ‘How, sir, do I know that the tenant for life is dead? I shall not take your assurance as worth anything. Make an affidavit.’ The attorney made an affidavit, swearing that the person named in it was dead. ‘Well,’ said Thurlow, ‘and what do you expect from such an affidavit? How do I know that the man named in the affidavit and the man who received the interest was the same person?’ The attorney said, ‘Then I suppose that I must make an affidavit of that, also; but surely I am treated with a degree of suspicion and harshness that I do not deserve. I'll make the affidavit; but your lordship will allow me to say that any other judge would not have required it. I know, I must know, the man is dead: I was at his funeral.’ ‘So, you might be, but how does that prove that the man who received the interest, and the man whose funeral you attended, was the same person?’ ‘My Lord, hear me, the man who received the interest, and whose funeral I attended was my client.’ ‘Why, sir, did you not mention that at first? A great deal of time and trouble might have been saved. That he was your client is some evidence that he may be dead; nothing was so likely to kill him.’—1 *Twiss's Eldon*, 280.

### A WOODEN MACHINE COULD DRAW PLEADINGS

“Lord Thurlow, when Chancellor, called Eldon into his room, at Lincoln's Hall, and, among other things, asked him if he did not think that a wooden-machine might be invented to draw bills and answers in chancery. Eldon told him that he would be glad, if such a machine could be invented, as his stationer's copy of his pleadings generally cost him more than the fees paid him by the solicitors. Many years after this, and when he had ceased to be Chancellor, and Eldon was attorney-general, a bill was filed against his friend, Mr. Macnamara, the conveyancer, and Lord Thurlow advised him to have the answer sent to Eldon to be perused and settled. The solicitor took the answer to Eldon and he read it. It was so wretchedly ill composed and drawn that Eldon told him that not a word of it would do; that he had not time to draw the answer from beginning to end; that he must set some gentleman to draw the answer who understood pleading and then bring it to him. Eldon then went down to the House of Lords, the same day, to plead a cause at the bar there. Thurlow was in the House of Lords and came to the bar, and said to Eldon, ‘So



I understand you think my friend Mac's answer won't do.' 'Do!' said Eldon: 'my lord, it won't do at all: it must have been drawn by that wooden-machine which you formerly told me might be invented to draw bills and answers.' 'That's very unlucky,' said Thurlow, 'and impudent, too, if you had known the fact, that I drew the answer myself.' "

—*1 Twiss's Life*, 167.

#### JUDGE SHOULD DECIDE LAW IN LIBEL CASES

"The construction of libels belongs by law and precedent to the judge, not to the jury; because it is a point of law of which they are not qualified to judge. If any other rule prevailed, if the matter was left to the jury, there would be nothing fixed and permanent in the law. It would not only vary in different counties and cities, according to their different interests and passions, but also in the minds of the same individuals, as they should happen at different times to be agitated by different humors and caprices. God forbid that the laws of England should ever be reduced to this uncertainty! All our dictionaries of decisions, all our reports, and Coke upon Littleton itself, would then be useless. Our young students, instead of coming to learn the law in the Temple and in Westminster Hall, would be obliged to seek it in the wisdom of petty juries, country assizes, and untutored mechanics. Adieu to precision, adieu to consistency, adieu to decorum! All would be confusion, contradiction and absurdity: the law would, like Joseph's garment, become **nothing** but a ridiculous patchwork of many shreds and many colors, a mere sick man's dream, without coherence, without order, a wild chaos of jarring and heterogeneous principles, which would deviate farther and farther from harmony. Yet the prevention of this state is the crime with which our judges are charged. *O tempora, O mores!* To what are we come at last!"

Thurlow was Lord Chancellor from 1778 to 1792, and held the great seal during the ministries of North, Rockingham and Pitt. He was a bitter opponent of the interests of the colonies during the American Revolutionary War.—*The Author*.

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#### CHOATE'S PROVING A NEGATIVE

"A vessel insured was prohibited from going north of the Okhotsh Sea. Within a year, the duration of the policy, she was burned north of the sea proper, but south of some of the sea's gulfs. Defendant set up no loss within the policy. On the way to the court house Choate said to his associates, as they were for plaintiff: 'Why should we prove we were not north of that sea; why not let them prove we were?' The mate was put on to prove the burning within the year and state the loss. No cross-examination followed and the plaintiff rested. The defendant was dumfounded; had no witnesses ready; expected plaintiff would consume two days in proving he was within the terms of the policy. The case lasted an hour and Choate won."

—*Reed's Conduct of Litigation*, 150.



## CHARLES O. TICHENOR (1842-1915), Missouri

### A LAWYER'S RETROSPECT

"Today I am seventy, three score and ten. Today I retire from the practice of the law, having practiced forty-six years. And I do so with pleasure, for it seems to me that a lawyer should do so while in full vigor of mind and body. A lawyer should be remembered by those with whom he has mingled professionally as he was in his prime, at his best. There is no more melancholy sight to me than to see an old lawyer practicing after he has ceased to be fit for the task in a profession which has no place for those enfeebled by age. One can live too long for his fame, small though it may be. At the end of life I have no cause to be vain, for the result of my hard work for a lifetime seems very small. It is difficult for one to realize that a lawyer could work so long and so faithfully as I have done and yet accomplish so little. I can say but little in my behalf, only this, that I have devoted my life to my profession and to my clients. If I have ever done an unprofessional act I do not know it, and think that I can safely say that I have at all times tried to hold high the standard of my profession, not by talk, but by my conduct as a lawyer. I have never tried to get a client, never have tried to get a case. I have never sought the so-called honors of this world, have never cared for them. I have always hated notoriety. I have never been money-mad. I do not wish to be remembered after I am dead. I never thought myself a great man, never had a suspicion that I could be one, and thus have saved myself much trouble, and my friends, it may be, some annoyance. I confess, however, that I have at all times desired the respect and friendship of those of my profession who have known me well.

"Although there are so many lawyers not fitted for their profession; although there is occasionally a black sheep among them; although there is so much drudgery in the general practice of the law, yet it is my judgment, formed from long experience and observation, that it is the noblest of all professions, more in it to develop a man who loves it and lives for it alone. And while it demands greater sacrifices in order to succeed than any other, yet if I was to live my life over again I would choose as I have chosen.

"I am glad that I have lived in the times during which I have lived. I have been blessed with health and strength during a long life and have had many opportunities, my share of them. I have had as much success as I have expected and fully as much as I have deserved. My life has been a pleasant one. I hope and believe that I have grown old gracefully and good naturedly. My day is spent, my tale is nearly told."

—*Charles O. Tichenor, Kansas City, Mo., Jan. 6, 1912.*

This letter was left by Mr. Tichenor, when he closed his practice in Kansas City, and moved to California, to spend his closing days in study and repose. He was one of the best and most eminent lawyers in Missouri and died in 1915 in Kansas City, to which he was brought after being stricken with paralysis. The compiler of this work wished him to become one of his group of 144 Eminent American, English and Canadian Lawyers, in which he would have been a worthy representative, but he replied to the request: "Much obliged for the compliment, but I would not go in the group of engravings for a thousand dollars. I would suffer by the comparison. What! with such judges and lawyers as Hale, Eldon, Mansfield, Hardwicke, Marshall, Choate, Pinkney and O'Connor? Why, I would suffer, in the comparison!"



## SAMUEL J. TILDEN (1814-1886), New York

### AN HONEST BAR

"If the bar is to become merely a method of making money, making it in the most convenient way possible, but making it at all hazards, then the bar is degraded. If the bar is to be merely an institution that seeks to win causes, and to win them by backdoor access to the judiciary, then it is not only degraded, but it is corrupt. \* \* \* Sir, I believe that this country is tonight at about the lowest point in the great cycle which we have occasionally to traverse. I believe that there will come a sounder and a better public sentiment in which speculation and gambling and jobbing and corruption will lose their power, and in which free government will vindicate its right to the confidence of mankind. If I did not believe this, I should think that a very great part of my own life was lost, and all the traditions I have derived from my ancestors."

—*To the New York Bar Ass'n, Feb. 1, '70, Samuel J. Tilden.*

### NULLIFICATION AND SECESSION

"I studied this whole question in 1830, during the controversy between the federal government and the State of South Carolina. If I ever studied any subject thoroughly and exhaustively, it was this question. I arrived at conclusions so clear and so completely thought out that I have never since felt a shadow of doubt rest upon them. Mr. Madison, the Father of the Constitution of the United States, was then living. He participated largely in the discussions of that period. He brought to the subject full knowledge of the views of the framers, and of the contemporaneous history of the Constitution, a large political philosophy, and half a century of thought, by the one great intellect. In my judgment no man can claim to understand the Constitution or government of the United States who is not familiar with the writings of James Madison. In the discussions of that period it was established that Thomas Jefferson, the founder of the Democratic party, entirely concurred with Mr. Madison in denying the rights of any State to nullify the laws or to secede from the Union. Andrew Jackson was President, Martin Van Buren was Vice-President, Edward Livingston was Secretary of State, Silas Wright was a Senator in Congress, William L. Marcy was Governor of this State. All of these great statesmen of New York shared in the discussions. They all repudiated nullification and secession, as did Jackson, Madison and Jefferson."

—*Speech at Union Square, N. Y., Sept. 17, '61.*

CHAS. O'CONNOR: "Possessed a more perfect knowledge of law than any lawyer in this country or abroad."—*Sam'l J. Tilden.*

### PRINCIPLES

"Principles are the test of political character. The Democracy always made fidelity to official trust and justice to the toiling masses who earn their bread by the sweat of their brow a fundamental article in the party creed. It is time now to proclaim and to enforce the decree that whoever plunders the people, though he steal the livery of Heaven to serve the devil in, is no Democrat."

—*'The Evil of Federal Centralism,' at Rochester, N. Y., Oct. 4, 1871.*



## GOVERNMENTAL MACHINERY

"In my opinion, no instrumentality in human society is so potential in its influence on the well-being of man kind as the governmental machinery which administers justice and makes and executes laws. No benefaction of private benevolence could be so fruitful in benefits as the rescue of this machinery from the perversion which made it a means of conspiracy, fraud and crime against the rights and the most sacred interests of a great community."

—*'The N. Y. City Ring: Its Origin, Maturity and Fall,' N. Y. City, Jan., 1873.*

## PEACE GREATER THAN WAR

"While it is a great thing to lead armies, it is a greater thing to lead the minds of men."

—*Said by Tilden to Wm. R. Nelson, of the Kansas City Star.*

## SALE OF THE PRESIDENCY

Tilden told Bigelow, his biographer, that a Justice of the United States Supreme Court, who was a member of the Electoral Commission, offered to sell the presidency for \$200,000, in the memorable campaign of 1876.

—*John Bigelow's 'Retrospection of An Active Life.'*

## THOMAS JEFFERSON

"Thomas Jefferson has a title to the esteem and gratitude of the American people even greater than that which he derived from being the author of the Declaration of Independence, and from being the author of the Statute of Religious Freedom by the State of Virginia. During all the bloody conflicts of the American Revolution, and the civil struggles out of which our system of government emerged, and the controversies through which was impressed upon it the character of a government 'by the people, for the people,' he was the apostle of human freedom, and the greatest leader of that beneficent philosophy which was embodied in our institutions. At a time when powerful tendencies are at work to subvert the original character of our government, to break down the limitations of power established by the Constitution, to centralize the action and influence of official authorities, to create a governing class, using the machinery of government as a corrupt balance of power in the elections, and then shaping legislation and administration in the interests of a few against the many, the precepts and example of such a man as Mr. Jefferson cannot be too often invoked."

—*From letter to Chauncey F. Black, upon being elected honorary member of the Jeffersonian Ass'n, of N. Y., N. Y., Jan. 27, 1881. 2 Bigelow's 'Tilden's Letters and Literary Memorials,' 611.*

## CHARLES O'CONOR

"In my judgment, Mr. O'Connor was the greatest jurist among all the English-speaking people. He carried the best spirit of philosophical inquiry into every professional investigation. In variety of resources, in every form of experience, participating in every important legal controversy during fifty years, with unexampled power of discrimination and memory, he had a vast mass of information on every professional subject. He was a man of lofty integrity and honor, and scorned all idea of making his professional abilities the means of acquiring money. His character is worthy of a more elaborate tribute than I have the opportunity to pay to him in the brief time of your call."

—*To a caller upon O'Connor's death: 'Tilden's Letters and Literary Memorials.' 2 vol., 643-4.*



## THE DEMOCRATIC AND REPUBLICAN PARTIES

"The Democratic party had its origin in the effort of the more advanced patriots of the Revolution to resist the perversion of our government from the ideal contemplated by the people. Among its conspicuous founders are Benjamin Franklin and Thomas Jefferson; Samuel Adams and John Hancock, of Massachusetts; George Clinton and Robert R. Livingston, of New York; and George Wythe and James Madison, of Virginia. From the election of Mr. Jefferson as president, in 1800, for sixty years the Democratic party mainly directed our national policy. It extended the boundaries of the Republic, and laid the foundations of all our national greatness, while it preserved the limitations imposed by the Constitution and maintained a simple and pure system of domestic administration. On the other hand, the Republican party has always been dominated by principles which favor legislation for the benefit of particular classes, at the expense of the body of the people. It has become deeply tainted with the abuses which naturally grow up during a long possession of unchecked power, especially in a period of civil war and false finance. The patriotic and virtuous elements in it are now unable to emancipate it from the sway of selfish interests which subordinate public duty to personal greed. The most hopeful of the best citizens it contains despair of its amendment except through its temporary expulsion from power. It has been boastfully asserted that the Republican party contains a disproportionate share of the wealth, the culture and the intelligence of the country. The unprincipled Grafton, when taunted by James the Second with his personal want of conscience, answered: '*That is true, but I belong to a party that has a great deal of conscience.*' Such reasoners forget that the same claim has been made in all ages and countries by the defenders of wrongs against new reforms. It was alleged by the Tories of the American Revolution against the patriots of that day. It was repeated against Jefferson, and afterwards against Jackson. It is alleged by the conservatives against those who, in England, are now endeavoring to enlarge the popular suffrage.

"All history shows that reforms in government must not be expected from those who sit serenely on the social mountain-tops enjoying the benefits of the existing order of things. Even the divine Author of our religion found His followers not among the self-complacent Pharisees, but among lowly-minded fishermen. The Republican party is largely made up of those who live by their wits, and who aspire in politics to advantages over the rest of mankind, similar to those which their daily lives are devoted to securing in private business. The Democratic party consists largely of those who live by the work of their hands, and whose political action is governed by their sentiments or imagination. It results that the Democratic party can be molded to the support of reform measures which involve a sacrifice of selfish interests."

—*Tilden's letter to the Committee Offering him the Presidential Nomination, in 1884: 'Letters and Literary Memorials,' 2 vol., 653-4.*

## JAS. SCHOULER'S CHARACTERIZATION

"Tilden, now 62 years of age (1876), when nominated for the presidency and far surpassing Hays in worldly wisdom and a varied experience, as he did in years, may be said to have reached, this year, the fullest maturity of his powers. It is quite doubtful, whether among the perplexities of a new Democratic Presidency, had he attained it, he would have sustained himself in supreme national office with the same vigorous grasp of affairs, selection of subordinates and attack upon existing abuses, that set him forth now with such prominence as one of the very greatest governors New York had ever chosen. At all events, this policy towards securing the new and highest prize of his calling was not to make



a zealous canvass as a public speaker but rather to conduct a still hunt for votes and avoid controversy. As an able corporation lawyer he had amassed a fortune, and, being unmarried, he had pursued politics from his youth, as a pleasurable diversion to a life of business, not always choice in his methods or associates. Many who had known him well thought him crafty and cunning, in spite of the splendid record for reform he had lately made. In finance, he was a master; his perfect ability to bear official responsibilities, so long as mental and physical health continued unimpaired, were beyond question, and he possessed skill undeniable in the arts of political management. All knowing well that immense pressure of a dangerous sort would be brought to bear upon him, were he and the Democratic party brought into immediate power, many who now concluded to give Tilden their independent support felt him to be a doubtful deliverer from misrule, if a deliverer at all. For the revival of a Democratic South gave cause of an anxiety and hesitation to Northern citizens who had always been loyal to the Union."

—7 *Schouler's U. S. Hist.*, 303-4.

### OUR DESIRES

"I have always believed that talent, ability, honor would achieve anything that the human heart ought to desire, if only it were interested that it should be achieved without any concession of one's conviction of right of one's sense of duty."

### HENRY WATTERSON ON TILDEN

"The nearest approach to the ideal statesman I have ever known was the most grossly stigmatized while he lived. I have Mr. Tilden in mind. If ever a man pursued an ideal life he did. From youth to age he dwelt amid his fancies. He was truly a man of the world among men of letters, and a man of letters among men of the world. A philosopher, pure and simple, a lover of books, of pictures, of all things beautiful and elevating, he yet attained great riches, and being a doctrinaire and having a passion for affairs, he was able to gratify the aspirations to eminence and the yearning to be of service to the State which had filled his heart. Tilden seemed a medley of contradictions. Without the artifices usual to the practical politician, he gradually rose to the power of his party; thence to become the leader of a vast following, his name a shibboleth to millions of his countrymen, who enthusiastically supported him, and who believed that he was the Chief Magistrate of the United States. He was an idealist; he lost the White House because he was so, though represented while he lived by his enemies as a scheming spider, weaving his web amid the coil of mystification in which he hid himself. For he was personally known to few, in the city where he made his abode; a great lawyer and jurist, who rarely appeared in court; a great political leader to whom the hustings were mainly a stranger; a thinker, and least of all were his political companions moved by the loss of the Presidency, which had seemed in his grasp, to have his last will and testament successfully assailed."—1 *Henry Watterson's 'Autobiography,'* 273-5.



## ROBERT TOOMBS (1810-1885), Georgia

### REBUKED THE IRISH JUDGE

Robert Toombs never took the "Iron Clad" oath after the war, and at one time arose to address Judge E——, an Irish Federal Judge, and was told by the judge to sit down, that he had no right to participate in his Court as he had never taken the oath of allegiance. Toombs indignantly replied: "I was in full practice, sir, in the United States Supreme Court, when you were drinking slops in the bogs of Ireland."

"I have heard John Randolph of Roanoke, and met Burges of Rhode Island, but this wild Georgian is a Mirabeau."

—*Geo. McDuffie of S. C., who met Toombs in debate at Augusta, Ga.*

Of this debate, Stovall in his *Life of Toombs*, pp. 45-6, says; "Genius sat upon his (Toombs) brow, and his eyes were as black as death and bigger than ox's. His argument and invective, his overpowering eloquence, linger in the memory of old men now."

"Toombs is one of the most extraordinary men I have ever known. As a talker I have never known his equal. As a lawyer, I have never seen his superior before judge or jury. As a legislator in debate, few in the House or Senate ever wishes to encounter him; none ever did to win any laurels by it. His mind is very quick and active. Contrary to general opinion, he has always been a close and hard student; but his powers of analysis and generalization are so great that he can acquire more in less time than any one I ever saw. In reading the report of a case, of an author on any subject, he at once seizes upon the real ideas, gleaning the vital part from the general verbiage by a process rapid as intuition. As a public speaker or 'stump orator', no one in any age or country ever had more power than he in the days of his prime. He was thoroughly read in local law, in United States history, and in national law. His true greatness did not consist in statesmanship; he was governed too much by passion and impulse. As a lawyer, debater, popular orator, planter, political economist, it would be difficult to find his equal, his superior could not be found in his day."

—*A. H. Stephens, 'Prison Journal,' Aug., '65.*

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### BARRINGTON'S PEN-PICTURE OF CURRAN

"Curran's person was mean and decrepit, very slight, very shapeless, with nothing of the gentleman about it; on the contrary, displaying spindle limbs, a shambling gait, one hand imperfect and a face yellow, furrowed, rather flat and thoroughly ordinary. Yet his features were the very reverse of disagreeable. There was something so indescribably dramatic in his eye and the play of his eyebrow that his visage seemed the index of his mind, and his humor the slave of his will. His very foibles were amusing. He had no vein for poetry, yet, fancying himself a bard, he contrived to throw off pretty verses. He certainly was no musician, but conceiving himself to be one, played very pleasingly. Nature had denied him a voice, but he could sing; and in the rich mould of his capabilities the desire had bred in some degree the capacity."



BENJ. F. TRACY (1830-1915), New York

## THE PERSECUTION OF BEECHER

"I ask of you for this defendant nothing but that justice which you would mete out to the humblest citizen; yet you cannot but feel, as I do, an overwhelming sense of the solemn importance of this trial. It will loom larger in history than any which has taken place for eighteen centuries. No man of this defendant's fame has ever been called upon to answer such a charge in a court of justice. What a spectacle has been presented in this city of churches! Every day for eight weeks this aged man, who has been a large and various contributor to the literature of the English tongue, and who never wrote a word that was not inspired by the love of God, of nature and of his fellow-men; who has swayed with sublimest eloquence greater multitudes than any living orator, and who never spoke save for justice, truth and virtue; who has convinced, rescued, instructed and comforted unnumbered thousands of erring, struggling, suffering souls, counting his own life, fortune and reputation as nothing, if by their risk or sacrifice he could serve the humble and the weak; this man whose fame encircles the earth, and whose name is honored and beloved wherever Christianity bears sway, has been dragged by malignant conspirators into this court to answer the vile and odious charge, which all the evidence of a lifetime outside of these walls, no less than the evidence produced within them, brands indelibly as a lie. Day by day he has passed along our streets with his brave and true wife, to meet the unmerited indignity of this arraignment. Strong men have been touched with mingled pity and wrath at the sight, and women have turned aside to weep. It is an outrage which posterity will avenge. This fair city will yet boast among her proudest monuments the statue of him who conferred upon her such glory, and received within her gates such torture. All who had part in this crowning drama of his life will be remembered with execration or with praise, those who falsely accused, who weakly doubted, those cowards who forsook him, those who were swift to believe evil, on the one side; and, on the other, those who steadfastly trusted, and those, gentlemen of the jury, who justly judged. Yes, gentlemen, by the judgment which you here pronounce, you will yourselves be judged at the tribunal of after ages. What you do here will never die. When these scenes shall have passed away; when he who presides over this trial shall rest in the silent chamber of the dead; when the seats you occupy shall be filled by your children, or your children's children, strangers from distant climes will come to view the place from which was given back to the world, freed from cloud or passing shadow, the name of Henry Ward Beecher. Even when centuries shall have rolled away, when these marble walls shall have crumbled and decayed, this trial will be remembered with undiminished interest. More eloquent than the words of this defendant, more inspiring than his deeds of magnanimity, more powerful among men than the story of all his life of usefulness and virtue, will be the recital of his serene faith and patience under dire affliction and deadly assault. Heroes are admired; it is the martyrs who are beloved. But the triumphal procession and the loud hosanna, the cup, the thorn crown, the cross, the sepulcher, conquered the world; and since the hour of the Divine Sufferer no follower of Christ has borne the cross in vain. Gentlemen, do you believe in God? Then you will recognize today what the generations to come will so clearly see; what the Day of Revelation will blaze forth in letters of immortal light, the mark of God's approval upon this, His faithful, upright, suffering servant, whom He hath hitherto guided, sustained, illumined, blessed;



whom, in the hour of tribulation, He hath not forsaken; and whom, by all the truth of His eternal promise and all the resources of High mighty power, He will surely rescue and reward; for 'though hand join in hand, the wicked shall not be unpunished, but the seed of the righteous shall be delivered.' "

—*Benj. F. Tracy for Defendant Beecher, in 1874. The Jury disagreed, standing nine for acquittal and three for a verdict against Mr. Beecher.*

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### CURRAN'S TILT WITH JUDGE ROBINSON

"When a young man and struggling with poverty, Curran had a case to argue in Judge Robinson's court, who owed his elevation to his sycophancy to power and certain miserably written political pamphlets. In controverting a position of an opposing counsel, Curran remarked that he had studied all his law books and could not find a single case where the principle contended for was established. 'I suspect, sir,' interrupted the judge, 'I suspect that your law library is rather contracted.' Curran, feeling the sneer at his poverty, looked the judge square in the face and replied: 'It is true, my lord, that I am poor, and the circumstance has rather curtailed my library; my books are not numerous but they are select and I hope have been perused with proper dispositions. I have prepared myself for this high profession rather by the study of a few good books rather than by the composition of a great many bad ones. I am not ashamed of my poverty, but I should be of my wealth, could I stoop to acquire it by servility and corruption. If I rise not to rank, I shall at least be honest; and should I ever cease to be so, many an example shows me that an ill acquired elevation, by making me the more conspicuous, would only make me the more universally and the more notoriously contemptible.' To have committed Curran for contempt would have been to acknowledge the application of the sarcasm; and he was allowed to proceed, but, thinking the matter over, the judge suddenly said: 'Sir, you are forgetting the respect which you owe to the dignity of the judicial character.' 'Dignity!' exclaimed Curran, 'My lord, upon that point I shall cite you a case from a book of some authority, with which you are perhaps not unacquainted.'

"He then briefly recited the story of Strap in Roderick Random, who, having stripped off his coat to fight, intrusted it to a bystander. When the battle was over and he was well beaten, he turned to resume it, but the man had carried it off. Curran thus applied the tale: 'So, my lord, when the person intrusted with the dignity of the judgment-seat lays it aside for a moment to enter into a disgraceful contest, it is in vain, when he has been worsted in the encounter, that he seeks to shelter himself behind an authority which he has abandoned.' 'If you say another word, I'll commit you,' replied the angry judge; to whom Curran retorted: 'If your lordship shall do so, we shall both of us have the consolation of reflecting that I am not the worst thing your lordship has committed.' "

—*'Whipple's Success and its Conditions,' 134; also 'Law and Lawyers,' 26.*



## LYMAN TRUMBULL (1813-1896), Illinois

### ABRAHAM LINCOLN

"I have often been requested to give my estimate of Mr. Lincoln's life and character. His death at the close of a great civil war, in which the government of which he was the head had been successful, and the manner of his taking off were not favorable to a candid and impartial review of his character. The temper of the public mind at that time would not tolerate anything but praise of the martyred President, and even now it is questionable whether the truthful history of his life by Herndon, his lifelong friend, and law partner for twenty years, will be received with favor. As I could not give any other than a truthful narration of Mr. Lincoln's character, as he was known to me, I have hitherto declined to write anything for the public concerning him. Having known him at different times as a political adversary and a political friend, my opportunities for judging his public life and character were from different standpoints. We were members of the Illinois House of Representatives in 1840. He was a Whig, and I a Democrat, but we had no controversies, political or otherwise. Indeed, Mr. Lincoln took very little part in the legislation of that session. It was the period when, as related by Mr. Herndon, he was engaged in love affairs which some of his friends feared had well-nigh unsettled his mental faculties. I recall but one speech he made during the session. In that he told a story which convulsed the House to the great discomfiture of the member at whom it was aimed. Mr. Lincoln was regarded at that time by his political friends as among their shrewdest and ablest leaders, and by his political adversaries as a formidable opponent. Contemporary with him in the legislature of 1840 were Edward D. Baker, William A. Richardson, William H. Bissell, Thomas Drummond, John J. Hardin, John A. McClernand, Ebenezer Peck and others whose subsequent careers in the national councils, on the field of battle, and in civil life have shed lustre on their country's history. It is no mean praise to say of Mr. Lincoln that among his galaxy of young men convened at the capital of Illinois in 1840, to whom may be added Stephen A. Douglas, although not then a member of the legislature, he stood in the front rank.

"As a lawyer, Mr. Lincoln was painstaking, discriminating, and accurate. He mastered his cases, and had a most fascinating and happy way of presenting them. He was logical, fair and candid. It was said of him by one of the most eminent judges who ever presided in Illinois that after Lincoln had opened a case he (the Judge) fully understood both sides of it. Some of Mr. Lincoln's contemporaries at the bar were more learned and better lawyers, but no one managed a case, which he had time to thoroughly study and understand, more adroitly. The breaking up of the Whig and Democratic parties in 1854, growing out of the repeal of the Missouri Compromise, and the opening of the territory to slavery, threw Mr. Lincoln and myself together politically. We were both opposed to the spread of slavery, and from the foundation of the Republican party till his death we were in political accord. I do not claim to have been his confidant, and doubt if any man ever had his entire confidence. He was secretive, and communicated no more of his own thoughts and purposes than he thought would subserve the ends he had in view. He had the faculty of gaining the confidence of others by apparently giving them his own, and in that way attached to himself many friends. I saw much of him after we became political associates, and can truthfully say that he never misled me by word or deed, but he was one of the shrewdest men I ever knew. To use a common expression, he was 'as



cunning as a fox.' He was a good judge of men, their motives, and purposes, and knew how to wield them to his own advantage. He was not aggressive. Ever ready to take advantage of the public current, he did not attempt to lead it. He did promulgate the artifice of war enacted by Congress forbidding army and navy officers from employing their forces to return slaves to their masters, under penalty of dismissal from the service, till more than six months after its passage. It was more than nine months after the enactment of a law by Congress declaring free all slaves of rebels captured or coming within the Union lines, or found in any place occupied by rebel forces and afterwards occupied by the forces of the Union that he issued the proclamation declaring free the slaves then within the rebel lines, all of whom, belonging to persons in rebellion, were made free by act of Congress as soon as the Union forces occupied the country, and till then the proclamation could not be enforced. When applied to by a friend, just previous to the meeting of the convention at Baltimore, which nominated him for a second term, to indicate what resolutions or policy he desired the convention to adopt, he declined to suggest any. These and many other illustrations might be given to show that Mr. Lincoln was a follower and not a leader in public affairs. Without attempting to form or create public sentiment, he waited till he saw whither it tended, and then was astute to take advantage of it. Some of Mr. Lincoln's admirers, instead of regarding his want of system, hesitancy and irresolution as defects in his character, seek to make them the subject of praise, as in the end rebellion was suppressed, and slavery abolished; during his administration, ignoring the fact that a man of more positive character, prompt and systematic action, might have accomplished the same result in half the time, and with half the loss of blood and treasure.

"Mr. Lincoln was by no means the unsophisticated, artless man many took him to be. Mr. Swett, a lifelong friend and admirer, writing to Mr. Herndon, says: 'One great public mistake of his character, as generally received and acquiesced in, is that he is considered by the people of this country as a frank, guileless and unsophisticated man. There never was a greater mistake. Beneath a smooth surface of candor and apparent declaration of all his thoughts and feelings, he exercised the most exalted tact, and the widest discrimination. \* \* \* In dealing with men he was a trimmer, and such a trimmer as the world has never seen.' (Herndon's Life of Lincoln, 537-8). And Herndon says in the same life (p. 471):

" 'He had a way of pretending to assure his visitor that in the choice of his advisers he was free to act as his judgment dictated, although David Davis, acting as his manager, at the Chicago Convention had negotiated with the Pennsylvania and Indiana delegations, and assigned places in the Cabinet to Simon Cameron and Caleb Smith, besides making other arrangements which Mr. Lincoln was expected to satisfy.'

"Another popular mistake is to suppose Mr. Lincoln free from ambition. A more ardent seeker after office never existed. From the time when at the age of twenty-three, he announced himself a candidate for the legislature from Sangamon County, till his death, he was almost constantly either in office or struggling to obtain one. Sometimes defeated and often successful, he never abandoned the desire for office till he reached the Presidency the second time. Swett says, 'He was much more eager for it the second time than the first,' and such was known to his intimate friends to be the fact, though his manner to the public would have indicated that he was indifferent to a second nomination. 'When first a candidate for the Presidency,' Mr. Herndon continues, 'he wrote to influential party workers everywhere, promising money to defray the expenses of delegates to the convention favoring his nomination.'

"While ardently devoted to the Union, Mr. Lincoln had no well-defined plan for saving it, but suffered things to drift, watching to take



advantage of events as they occurred. He was a judge of men and knew how to use them to advantage. He brought into his Cabinet some of the ablest men in the nation, and left to them the management of their respective departments. This country never had an abler head of the Treasury Department than Salmon P. Chase. To his skillful management of the finances the country was indebted for the means to carry on the war of the rebellion, and bring it to a successful issue. For the distinguished ability with which the State Department and the War Department were managed during the rebellion, the country is greatly indebted to Mr. Seward and Mr. Stanton. Other members of the Cabinet were men of great executive ability. Lincoln was unmethodical and without executive ability; but he selected advisers who possessed these qualities in an eminent degree.

"To sum up his character, it may be said that as a man he was honest, pure, kind-hearted and sympathetic; as a lawyer, clear-headed, astute and successful; as a politician, ambitious, shrewd and farseeing; as a public speaker, incisive, clear and convincing, often eloquent, clothing his thoughts in the most beautiful and attractive language, a logical reasoner, and yet most unmethodical in all his ways; as President, during a great civil war, he lacked executive ability, and that resolution and prompt action essential to bring it to a speedy and successful close; but he was a philanthropist and a patriot, ardently devoted to the Union and the equality and freedom of all men. He presided over the nation in the most critical period of its history, and lived long enough to see the rebellion subdued, and a whole race lifted from slavery to freedom. The fact that he was at the head of the nation, when these great results were accomplished, and of his most cruel assassination, before there was time to appreciate the great work that had been done during his administration, will forever endear him to the American people, and hand his name down to posterity as among the best, if not the greatest, of mankind."

—*From letter to his son, Walter Trumbull, who died in 1891, from among Senator Trumbull's papers. Horace White's Life of Trumbull, 426-30.*

### TRUMBULL'S REASON FOR NOT SUSTAINING ANDREW JOHNSON'S IMPEACHMENT

"Once set the example of impeaching a President for what, when the excitement of the hour shall have subsided, will be regarded as insufficient cause, and no future President will be safe who happens to differ with a majority of the House and two-thirds of the Senate on any measure deemed by them important, particularly if of a political character. Blinded by partisan zeal, with such an example before them they will not scruple to remove out of the way any obstacle to the accomplishment of their purpose, and what then becomes of the checks and balances of the Constitution, so carefully devised and so vital to its perpetuity? In view of the consequences likely to flow from this day's proceedings, should they result in conviction, on what my judgment tells me are insufficient charges and proofs, I tremble for the future of my country. I cannot be an instrument to produce such a result, and at the hazard of the ties of friendship and affection, till calmer times shall do justice to my motives, no alternative is left me but the inflexible discharge of duty."

—*May, 1868, 'White's Life of Trumbull, 319.*

### NEVER BORROWED MONEY

Trumbull never borrowed money, never was in debt, never signed a promissory note, always paid cash down for real estate, and passed through life without pecuniary liabilities."

—*Horace White, Life of Lyman Trumbull, 21.*



## TRUMBULL ON DOUGLAS

"In the Democratic party, Douglas had forged to the front by virtue of boldness in leadership, untiring industry, boundless ambition and self-confidence and horse-power. He had a large head surmounted by an abundant mane, which gave him the appearance of a lion, prepared to roar or to crush his prey, and not seldom, the resemblance was confirmed, when he opened his mouth on the hustings, or in the Senate Chamber. As a stump orator, sensational debater and party manager, he never has a superior in this country. Added to these gifts, he had a very attractive personality, and a wonderful gift for divining and anticipating the drift of public opinion. The one thing lacking to make him a man 'not for an age but for all time,' was a moral substratum. He was essentially an opportunist. Although his private life was unstained, he had no conception of morals in politics, and this defect was his undoing as a statesman."—*White's Life of Trumbull*, 33.

## THE DOUGLAS—GOUDY—LINCOLN ESTIMATE

In 1891, at his office in Chicago, W. C. Goudy told F. L. Stetson that Judge Douglas spent the night with him, at his house, in that city, previous to his debate with Lincoln; that after the evening meal, Judge Douglas exhibited considerable restlessness, pacing back and forth upon the floor of the room, evidently with mental preoccupation. The attitude of Judge Douglas was so unusual that Mr. Goudy felt impelled to address him, and said: "Judge Douglas, you appear to be ill at ease and under some mental agitation; it cannot be that you have any anxiety with reference to the outcome of the debate you are to have with Mr. Lincoln; you cannot have any doubt of your ability to dispose of him."

Whereupon, Judge Douglas, stopped abruptly, turned to Mr. Goudy, and said with great emphasis:

"Yes, Goudy, I am troubled over the progress and outcome of this debate. I have known Lincoln for many years, and I have continually met him in debate. I regard him as the most difficult and dangerous opponent that I have ever met and I have serious misgivings as to what may be the result of this joint debate."—*White's Life of Trumbull*, 40.

## WILLIAM PITT FESSENDEN

"The best speech (against the Lecompton Bill), on the Republican side, was made by Fessenden, of Maine, than whom a more consummate debater or more knightly character and presence has not graced the Senate Chamber in my time, if ever."—*White's Life of Trumbull*, 83.

## JOHN BROWN'S BOLDNESS

"John Brown, with \$4,000 worth of material of one kind and another, and twenty-nine men, undertook to do something which the government itself, with more than 1,000,000 trained soldiers, 500 warships, and \$3,000,000,000, accomplished with difficulty, at the end of a four-year's war, during which no negro insurrection, large or small, took place. Brown refused his counsel to put in a plea of insanity at his trial."—*Idem*, 97.

## AMENDING THE CONSTITUTION—SLAVERY

"But, sir, unlike the Senator from Oregon (Baker) I will never agree to put into the Constitution of the country a clause establishing or making perpetual slavery anywhere. No part of God's soil shall ever be dedicated to African slavery by my act, never, sir. I will not interfere with it where I have no authority by the Constitution to interfere; but I



never will consent, the people of the Northwest, numbering more in white population than all your Southern States together, never will consent by their act to establish African slavery anywhere. Why, sir, the seven States of the Northwest, at late Presidential election, cast 300,000 more votes than all the fifteen Southern States together. Senators talk about the North and the South, and speak of having two Presidents, a Northern President and a Southern President, as if we had no such country as the Northwest, more populous with freemen than all the South. The people of the South and the people of the East both will, by and by, learn, if they have not already learned, that we have a country and a great and growing country in the Northwest; a free country, made free, too, by the act of Virginia herself. I do not propose to discuss the House Resolution. I have said on any and all proper occasions, and am willing to say at any time, to our brethren of the South, we have no disposition, and never had any, and have no power, if we had the disposition, to interfere with your domestic institutions."

—*On Crittenden's (of Ky.) Resolutions to Compromise with the South on Slavery, U. S. Senate, Mch. 2, '61.*

### VALLANDIGHAM

"Vallandigham as a public speaker had no attractions, but rather, as it seemed to me, the tone and front of a fallen angel, defying the Almighty. There was neither honor nor persuasion nor conciliation in his make-up. He was cold as ice and hard as iron. Although born and bred in a free State, he avowed himself a pro-slavery man. In the speech referred to (in the House, Jan. 14, '63) he took two hours to prove:

1. That the Southern Confederacy never could be conquered;
2. That the Union could never be restored by war;
3. That it could be restored by peace;
4. That whatever else might happen, African slavery would be fifty-fold stronger at the end of the war than it had been at the beginning."

### EMANCIPATION

"If the President had legal authority to issue the Emancipation Proclamation, then he, or a successor, could revoke it."

—*White's Life of Trumbull, 222.*

### TWO THEORIES OF RECONSTRUCTION

"There were two theories of reconstruction; one was that the act of secession annihilated the State Governments and put the inhabitants and their belongings in the condition of newly acquired territories, subject in all things to the conquering power (Sumner and Thad Stevens).

"The other view was that every act of secession was null and void; that State sovereignty was suspended, but not extinguished in the Confederacy, and that when the rebellion was crushed it became the duty, the rightful nucleus of sovereignty, to assist them to set the State governments up again; in harmony, however, with accomplished facts, including the abolishment of slavery."

—*Adopted by Lincoln, White's Life of Trumbull, 231-2.*

### JOHN M. HARLAN—CIVIL RIGHTS DECISION

"Harlan's dissent in the Civil Rights Act, of 1866, is worth more than all other literature on the subject that the books contain."

—*White's Life of Trumbull, 276.*



## WILLIAM PITT FESSENDEN

"As a debater engaged in the current business of legislation, the Senate has not had his equal in my time. No man could detect a sophistry or perceive a scheme or a job quicker than he, and none possessed the power to expose it more effectually. He was a practical, matter-of-fact man, utterly abhorring all show, pretension and humbug. \* \* \* But, I did not rise so much to speak of the great abilities and noble traits of character which have made Fessenden's death to be felt as a national calamity, as of the personal loss which I myself feel at his departure. Only three others are now left who were here when I came to the Senate, and there is but one who came with me. There has been no one here since I came to whom I oftener went for counsel and whose opinions I have been accustomed more to respect than those of our departed friend. There were occasions, during our fourteen years of service together when we differed about minor matters and had controversies, for the time unpleasant, but I never lost my respect for him, nor do I believe that he ever did for me. He was my friend more closely, perhaps, the last year or two than ever before. Like other Senators I shall miss him in the daily transactions of this chamber, and, perhaps, more than any other shall miss him, as the one person from whom I most frequently sought advice. I am not one of those, however, who believes that constitutional liberty, our free institutions, or the progress of the age, depend upon any one individual. When the great and good Lincoln was stricken down, I did not believe that the Government would fail, or liberty perish. Though his loss may have subjected the country to many trials it would not otherwise have had, still our Government stands and liberty survives. Another has taken Mr. Fessenden's place; others will soon occupy ours, to discharge their duties better, perhaps, than we have done, and he among us today will be fortunate, indeed, if, when his work on earth is done, he shall leave behind him a life so pure and useful, a reputation so unsullied, a patriotism so ardent, and a statesmanship so conscious as William Pitt Fessenden."—*Congressional Globe*, 113, for 1869.

## JAMES SCHOULER ON TRUMBULL

"The next acceptable candidate to sincere reformers was Lyman Trumbull, whose period of national service closely coincided with that of Adams, and whose favor to the present movement (civil service reform) presaged a final exit from politics should it fail of success. A man of slight build, who wore spectacles, modest and quiet in demeanor and of kindly manners, Trumbull, in his Senatorial career, which covered a whole historic era, was in speech and vote one of the most fearless and conscientious as also one of the wisest of all legislators in Washington. In the printed record of some twelve immortal years, he stands forth a giant in debate, morally and intellectually, and one would have thought, physically, as well, and recognized by this time, as possessed of one of the best legal minds in Congress, he showed what is rare enough among lawyers, who engage in party politics, the quality of clear discrimination."

—7 Schouler's *U. S. Hist.*, 212-13.

## CLARK E. CARR ON TRUMBULL

"Trumbull was a man of singularly acute and analytic mind. Every proposition that came before him, whether of politics or of law, whether involving grave constitutional questions, or the appointment to some trivial office, was reasoned out by him without reference to policy or political claims. He was regarded as the most cold-blooded man who ever appeared in public life in Illinois. He was a native of Connecticut, had many characteristics of his Puritan ancestors. He never had anything



like a political machine to support him, nor a coterie of politicians to manage his canvases; and yet for three successive terms, by the force of his intellectual power, he was elected and re-elected to the United States Senate, and would no doubt have been elected the fourth time but for his vote against the impeachment of President Johnson, which is now generally approved. He knew when he took that position that it was unpopular with his party, the Republicans; but as a legal proposition he subjected it to that thorough analysis for which he was distinguished, and voted with the Democrats. Except for him, President Johnson would have been convicted, under articles of impeachment, and removed from office; and a dangerous precedent thereby established. In the final judgment of mankind, when the historian shall consider the measures with which he was prominently connected as chairman of the Judiciary Committee of the Senate, reconstruction, constitutional amendments, impeachment, and all the rest, the character and attainments and achievements of Lyman Trumbull will be properly appreciated."

—*'The Illinii,' by Clark E. Carr, 257.*

For Wm. P. Hackney's tribute to Trumbull, See "Hackney" under "Fame."

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### THE IGNORANCE OF JEREMY BENTHAM

"While Bentham was little versed in the history of English law, he was profoundly ignorant of Roman and Continental law. His view of the Roman law was so inadequate as to cause him to pronounce it 'a parcel of dissertations badly drawn up.' His fundamental idea was that the legislator must first arrange a proper code of laws upon a philosophy of human law borrowed from Helvetius, which considered a balancing of so called pleasure and pain that ignored the higher attributes of human spirit; that this code so arranged should be settled so that nobody of decision in regard to the meaning of its provisions could ever grow up around it; then this result should be made certain by never permitting any lawyer to become a judge, and that code so settled would be good and workable for any nation regardless of its existing law, or its past history or its racial or social characteristics. This is the secret of Bentham's offers to make the same code for Turkey, for Egypt, for France, for Spain, for Portugal, for Russia, for Switzerland, for Morocco, for the States of our Union and for the new South American Republics."

—*John Maxcy Zane, in 'Great Jurists of the World,' 538.*

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### WM. M. EVARTS AND JOSEPH H. CHOATE

"The great things Mr. Evarts said would be talked of long after dinner. I remember on one occasion his famous partner, Joseph H. Choate, who was a Harvard man, while Evarts was a graduate of Yale, introduced Mr. Evarts by saying that he was surprised that a Yale man, with all the prejudices of that institution against the superior advantages of Harvard, should have risked the coats of his stomach at a Harvard dinner. Mr. Evarts replied: 'When I go to a Harvard dinner I always leave the coats of my stomach at home.'"

—*C. M. Depew's 'Memories of 80 Years,' 106.*



## JOHN RANDOLPH TUCKER (1823-1897), Virginia

### A CONCRETE CASE IN EQUITY JURISPRUDENCE

"The case of Langford v. Barnard was decided in the year 1595-'96 (37th. Eliz.) Tothill, 134. The Merchant of Venice was published in the years 1598 and 1600. This case brought into collision the claim to the penalty which the law allowed the obligee on a penal bond, or the right of foreclosure of a mortgagee or land (or, 'the pound of flesh,' it might be), with the decree which equity made, that the penalty should be forbidden, when the thing was offered to be done which the penalty was designed to secure. Will Shakespeare, no more a technical lawyer than my noble old friend, in the offer which Equity, in the person of Portia, made to Shylock to take his debt and release the penalty, took sides with the chancery against the law. He meant to depict the cruel injustice of the law and the perfect justice which chancery afforded by the equity of redemption and furnished an argument, which has, in the judicature of the English speaking people, established for three centuries a remedy the Doge of Venice never knew, but which the fair Portia, voicing the broad views of the great dramatic poet, suggested as the true solution of '*in re Shylock*.' In the court of law the judgment was wrong on the grounds on which it was made to rest, as Mr. Green insisted; but even in that court was right on the point made by Mr. Holliday, and which Portia did not rely upon. But Shakespeare's Portia showed what jurisprudence ought to be, in staying the hand of the cruel exactor of a mortal penalty, and compelling him to take his debt and be satisfied, thus saving the debtor from the penalty, but requiring him to do justice to the creditor.

"Did not Shakespeare, the boon companion of the famous lawyers of the kingdom, write his great drama to show what jurisprudence should be in such a case, to satirize the harsh doctrines of the Common Law, and to vindicate the then recent, and now established, doctrine of Langford v. Barnard?"

*—In the above Mr. Tucker describes three picturesque Virginia lawyers of the old school, Wm. F. Gordon, Wm. Green and Alexander R. Holliday, and an argument between them as to the soundness of Portia's decision, in the case styled by them, 'In Re Shylock.'*

Mr. Justice Harland says of John R. Tucker: "In my opinion, he was one of the foremost of the American lawyers of his generation."

### CHUMSHIP OF TUCKER AND GARFIELD

"The delightful chumship which existed between Tucker and Garfield was marked. Tucker was educated at the University of Virginia, and a Jeffersonian of Jeffersonians; Garfield was born of the humblest of parents, in the Western Reserve, and every drop of his blood was New England Puritan. Later he was educated in Massachusetts, and was a Hamiltonian of the Hamiltonians, except that he was a heretic as to the dogma of protection. Both Tucker and Garfield were highly educated men, and when in Congress together they were fond of spending hours together discussing the ancient and modern classics. There was always a heap of the grown-up boy about Garfield. He loved to gush, though one of the most formidable debaters Congress ever knew, and perhaps his acquired knowledge, gained from books, surpassed that of any other man in the public life of his day. If he and Blaine, or he and Ben Harrison had



been fused and made one, what a giant he would have been! I have said that Garfield was much of the boy and very fervid. A case in point was when he exclaimed:

“ ‘If Cicero were reincarnate and should visit these walks, Ran Tucker is the only man who could hold satisfactory converse with him.’ ”

—*Savoyard's Letter, Kansas City Star, Mar. 5, 1911.*

### HISTORY SLEEPS

In the Hayes-Tilden contest, before the Electoral Commission, and while William M. Evarts was discussing the law to the tribunal, the venerable historian, George Bancroft, nodded in sleep. Mr. Tucker, pointing to the sleeping historian, said in a stage whisper to those sitting near him, “History sleeps while fiction speaks.”

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### JOHN VAN BUREN'S REPLY WHEN INTERRUPTED

To a gentleman who interrupted John Van Buren, while making a political speech, Van Buren said: “Perhaps my friend will allow me to answer him with an anecdote. In my native village there was a patient to whom his physician said, ‘Your symptoms are dangerous, but a single remedy will check them. You will have to drink a quart of catnip tea in order to recover.’ ‘Then I must die.’ ‘Nonsense, you can swallow the liquid.’ ‘Ah, yes, Doctor, but you mentioned a quart and my stomach only holds a pint.’ ” “Perhaps,” concluded the speaker, still fastening his glittering eye—ancient mariner like—on the interruptor, “our friend's brain yonder can only hold a small pint (pronouncing the word in the old fashioned style as *pint*) of political wisdom.”—*The Author.*

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### WHAT MAY BE SAID OF GOD

“For as much as God Almighty is incomprehensible, it followeth that we can have no conception or image of the Deity; and consequently all his attributes signify our inability and defect of power to conceive anything concerning his nature; and not any conception of the same, save only this: That there is a God, for the effects we acknowledge naturally do include a power of their producing before they were produced, and that power presupposeth something existent that hath such power, and the thing so existing with power to produce, if it were not eternal, must needs have been produced by something before that, till we come to the Eternal, that is to say, the first power of all powers and first cause of all causes, and this it is which all men conceive by the name of God, implying eternity, incomprehensibility and omnipotence,”—*Thomas Hobbes.*



SAMUEL UNTERMYER ( - ), New York

## THE NEW YORK STOCK EXCHANGE

"A passing survey of the intimate public relations of the Stock Exchange to our National and international financial life will demonstrate the enormity of the offense of omission of which Congress has been guilty in permitting its organization, management and operations to be conducted through all these years without supervision or control. Many of the vast illegitimate fortunes that have debauched our citizenship are attributable directly to that cause. For many years the pretended market prices of securities of our greatest corporations have been 'rigged' and manipulated at the will of a handful of gamblers and operators and the people of the country have been literally robbed of hundreds of millions of dollars through such transactions. Some of the best known names in the country were those of men who amassed great fortunes from the recognized business of 'operators in the securities of given corporations that they were employed to manipulate, sometimes on the "bear" side, and sometimes on the "bull" side of the market.' Nowhere was there any restraint upon the malign activities of these men or their powerful and respectable principals, among whom were numbered the greatest financiers of the country."

—*'Speculation on the Stock Exchange and Public Regulation of the Exchange,' Princeton, N. J., Dec. 29, '14.*

## REGULATION OF THE STOCK-EXCHANGE

"Unless I wholly misapprehend the operation of our financial system, the regulation by law of the Stock-Exchange is an indispensable condition precedent to the destruction of the control of great financial credits by a few men or to any effective corporate reform in this country. It is the illegitimate use of the facilities of this, the world's greatest security market, that many of the vast predatory fortunes have been filched from the public. The relation and importance of the exchange to corporate independence of banking domination are little understood. We shall accomplish nothing substantial in the direction of the coveted goal of financial emancipation toward which we are striving until this factor is appreciated and dealt with as an essential factor in the general scheme of reform."—*Idem.*

## THE MONEY TRUST

"Competition will not rear its head to give battle to the entrenched interests that are under the protecting wing of the men who wield this destructive power. No overt act is necessary on their part. The mere existence of the power is continuing threat. So long as they dominate the sources of credit and can terrorize every new venture so long will it continue useless to attempt the emancipation of business. Disintegration of existing combinations will not in itself solve the problem. It must be supplemented by new competition with fresh young blood and comparatively small beginnings. That is not possible whilst the present concentration of the control of credits continues in a few hands. All legislation must be directed primarily against its destruction and toward thus restoring freedom throughout the arteries of trade and finance."

—*'The Relation of the Farmer to the Trust Question,' delivered in Chicago, Ill., Apr. 15, 1914.*



## COMPETITION SHOULD BE REGULATED

"Unrestricted ruinous competition should be regulated competition. The former invariably leads to monopoly. The latter does away with the oppression of weak competitors and with every vestige of pretext for combination. The distinction between co-operation and combination is fundamental. The former is distinctly beneficent if so supervised and restricted that the levying of tribute upon the public is prevented. The latter is economically unsound and oppressive. Instead of the innumerable secret and unlawful arrangements that are now tolerated, under cover of which there is now taken from the people 'all that the traffic will bear,' it will be the duty of the parties to submit their agreement to the Trade Commission. The latter, with the aid of its expert accountants, will determine whether the conditions are reasonable and fair to the public in the same way that the Interstate Commerce Commission now determines the far more complicated question of rates. With such relief at hand public sentiment will support the rigid enforcement of the criminal law against all trusts and secret arrangements."—*Idem*.

## HOLDING COMPANIES MAKE TRUSTS POSSIBLE

"Incidentally it may be well to remember that but for the device of the holding company the majority of the trusts that are afflicting the country, especially the great ones, could never have been born. The history of the oppression that was practiced upon the minority in some of those cases to force them into the combination or into parting with their holdings constitutes one of the most disgraceful chapters in modern high finance, and that is certainly saying much."

—*'Some Needed Legislative Reforms in Corporate Management,' Hotel Astor, N. Y., Jan. 5, 1911.*

## INSURANCE COMPANIES NOT REPRESENTATIVE

"The officials of these (life insurance) companies are in no sense representative of the policy-holders. They are mainly self-appointed custodians of other people's money without real accountability except such as the State imposes. They masquerade as mutual companies controlled by the policy-holders, but they are such only in name. If all the officials were sent to jail you could not change the management. It would not be to anyone's interest to try it. With the vast agency forces paid by the policy-holders but arrayed with management the strongest opposition is readily overwhelmed. One of the companies had at the end of 1909 over *ten million* policies in force, and have today over eleven million; its policy-holders consist mainly of working people with policies that average less than two hundred dollars each, or just about enough to bury them decently. A single circular to the policy-holders in that Company would cost about \$400,000."—*Idem*.

## THE TARIFF BILL NOT RESPONSIBLE FOR OUR PLIGHT

"Nor is the Tariff Bill to any appreciable extent responsible for our plight. A downward revision was demanded by the people and recognized as necessary by all parties. The change has been an average of about 43% to an average of about 26%, and has been on the whole wisely distributed. It is the first Tariff Bill enacted in our history that was unselfish and uninfluenced by the demands of special interests, which have heretofore dictated this class of legislation. If with that percentage of protection we are unable to meet foreign competition in our country and stimulate our export business, we may as well count ourselves 'out of the game' in the world's markets. The statistics for the first eight



months of the operation of the new law show far less disturbance in the currents of trade than was fairly to be expected. We have been a shiftless, prodigal and unscientific people in our methods of manufacturing and marketing our goods. The unique shelter of the Tariff and the elimination of home competition through the Trusts and trade agreements have weakened our business virility, encouraged extravagance, substituted bureaucracy for individuality in our Trust-controlled industries and have thereby crippled our competitive power. With our superior labor and vast neutral resources we should be leading the world as an export manufacturing nation instead of which we are in imminent peril of ceasing to be a factor."—*Reasons and Remedies for our Business Troubles,* Pittsburgh, Pa., May 22, 1914.

### PUBLIC CONFIDENCE

"The remedy is simple. Public confidence in corporate management must be restored. The existing legal machinery does not assume responsibility and punishment for the misdeeds of Big Business. The enactment of the pending bills properly strengthened will help accomplish that result. Ours is a rich country. Our wealth is fairly well distributed, notwithstanding the many hundreds of millions that have been confiscated by these men in one way or another, by way of tribute or through gross neglect. A fraction of it can still be recovered by the shareholders, if they will stand together in each of these great corporations to enforce restitution and protection for the future. If the lessons of the past have taught them to manage their own affairs hereafter, it will have been worth the fearful cost. When they are able to do that as in former years, when these great properties were built up and operated by their real owners, and not until then, the investing public here and abroad will again interest itself in our enterprises. Meantime, we can do our share toward reassuring the civilized world that we are not a Nation of freebooters and that we have sufficient of the capacity for self-government left to end the recklessness and lawlessness of High Finance so that capital will hereafter be as safe with us as in other countries."—*Idem.*

### THE DUTY OF A PROSECUTING ATTORNEY

"It is with sincere regret and reluctance that I assert that save in rare instances the modern Prosecutor does not stand between the People and the accused. He and his assistants too often measure the success of their labors by the number of convictions they have secured. It is a false and brutal conception of duty that is responsible for grave injustice, but it is none the less true that it exists. Under its influence the Prosecutor becomes a partisan advocate, blind to the strength of the defense, unwilling to voluntarily expose the weakness of the people's case. The People are as deeply interested in proving the innocence of the accused, where he is unable to defend himself, as to prove his guilt. By all means, let us have a Public Defender in the interest of fair play and common humanity."—*The Evils and Remedies of the Administration of the Criminal Law,* Philadelphia, Pa., Apr. 9, 1910.

### THE REGULATION OF BUSINESS

"The regulation of business is of course one of the most important functions of government, and one without the constant exercise of which business would not be possible. \* \* \* The people are beginning to realize that the methods now being adopted for the enforcement of the law will accomplish nothing beyond mere changes in the form of organization and new devices for evading the spirit of the law."

—*Government Regulation of the Trusts with Special Reference to the Sherman Act,* N. Y., Nov. 22, 1911.



## SHERMAN LAW SHOULD BE MODIFIED

"That the Law (the sherman Law) is inadequate and the machinery of the Courts is ill-adapted to the genuine enforcement of judgments of dissolution, we believe and respectfully insist. That as supplementing the Sherman Law, there is needed and should be constituted a body with powers over Inter-State industrial corporations, similar to the powers of the present Inter-State Commerce Commission over Railroads, to which shall be entrusted the disintegration of all corporations adjudged to be existing in violation of the Law, subject to review and control by the Courts, by which the judgments were rendered. This Commission would have the duty of supervising the execution of the judgment and enforcing obedience to it; of seeing to it that the disintegration is not merely Pickwickian, but that it is made and kept real and effective."—*Idem*.

## NEED AN EMPLOYERS' LIABILITY LAW

"With our insufferable provincial narrowness and egotism we generally manage, in the end, to begin about where they (foreign nations) leave off, on these questions of government. It takes us some time, but we get there eventually, and so we shall, I hope, in course of time have an Employers' Liability Law; and a National Insurance Law, such as England is now copying from Germany. In time, I have no doubt, we shall get a scientific Corporation Law that will enforce publicity and protect the investor instead of the present jumble of laws that are a premium upon corporate laxity and dishonesty. We may even reach the point of just and civilized methods of taxation where they belong. We may even, when we become sufficiently wise, learn from them to govern our Cities, so that they will cease to be nests of corruption, and be fit for human habitation. But, we must first cease scoffing at what we do not understand and begin to realize that unparalleled as is our genius as money grubbers and in many more laudable directions we are still children in the science of Government. If our experience with this question has not convinced us of that fact, we are indeed hopeless."—*Idem*.

## THE INTER-STATE COMMERCE COMMISSION

"The accomplishments of the Inter-State Commerce Commission is the greatest triumph of modern times in scientific Government. No one who has watched at close range our progress in securing control over the railroads will doubt our capacity for progressive government in that direction. It saved us from government ownership of the railroads, as the like regulation of Industrial Corporations will save us from socialism. Of all the accomplishments of President Roosevelt's Administration, the standards he set in the selection of the personnel of the Commission, and the working of that problem, will be an enduring monument to his courage, foresight and constructive genius."—*Idem*.

## CAPITAL AND LABOR IN U. S., ENGLAND AND GERMANY

"Ours is the most reactionary of all civilized countries in the pending peaceful revolution for the readjustment of the division between Capital and Labor. England and Germany are half a century in advance of us in all that pertains to the proper protection of labor and the scientific distribution of the burdens of taxation. Their systems of insurance against accident, old age, sickness and unemployment and the new English land tax laws are the models of constructive legislation that we shall follow, when we have reached their stage in the outward march toward industrial and economic liberty. This small but powerful



privileged class of ours postponed the levying of an income tax for almost a quarter of a century, although it had long been recognized, the world over, to be the most just form of taxation. With their vast power and machinery to manufacture and mislead public opinion through their press and subsidized organs, they are enabled to make an amount of noise and stir up a degree of uncertainty and alarm over every attempt at progressive legislation, grossly disproportioned to their real influence, and dangerously misleading."

—*'A Legislative Program to Restore Business Freedom and Confidence,' Chicago, Ill., Jan. 5, 1914.*

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### MARTIN VAN BUREN

"Van Buren," says John Fiske in his "Historical Essays," (vol. 1, 348) "was the greatest master of political economy, and the most lucid conception was had by him of the proper sphere of our government, of all the Presidents; and Shepards' Life of him is the ablest of the 'Statesmen Series.'"

In the spring of 1816, Van Buren moved to Albany and entered at once upon an extraordinary professional and political career. He first took his seat in the State Senate, January, 1813. His dress and personal appearance were subjects of satirical attacks by his enemies. He was dressed in a green coat, buff breeches, white topped boots and carried in his right hand a light ivory-headed cane. These with his foppish bearing, caused him to appear more like a sporting man than a Senator. Being slight in form and small in stature, his person was sneered at. Soon after his admission to practice he formed a partnership with Benjamin F. Butler, and the firm was soon considered one of the most distinguished in the state of New York. Not only in the legal world, but for its controlling power in politics. One of Van Buren's greatest secrets of success was his discernment in the selection of his friends and allies. In this he excelled the subtlety of Richelieu, Buckingham and Halifax. He used to say he would rather walk twenty miles to see a man than to write him a letter.

—*The Author.*

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### RICHARD ZOUCHE

"Zouche is the greatest of the English school of international jurists and publicists; and the subsequent traditions of this school of writers, not to mention many continental writers of the positive school, owe much to his influence and example. \* \* \* His wide learning and great ability, judicial as well as literary, were recognized in his own time; and his opinions, both in his lifetime and after his death, were regarded as possessing high authority. He occupies an important place in the history of the law of nations. His principal book was the first real treatise on international law."

—*Coleman Phillipson, 'Great Jurists of the World,' 220-247. (Zouche was born in Wiltshire, England, 1590 and died 1661).*



## ZEBULON B. VANCE (1830-1894), North Carolina

### THE JEW

"The Jew is beyond doubt the most remarkable man of this world, past or present. Of all the stories of the sons of men there is none so wild, so wonderful, so full of extreme mutation, so replete with suffering and horror, so abounding in extraordinary providences, so overflowing with scenic romance. There is no man who approaches him in the extent and character of the influence which he has exercised over the human family. His history is the history of our civilization and progress in this world, and our faith and hope in that which is to come. From him have we derived the form and pattern of all that is excellent on earth or in heaven. If, as DeQuincey says, the Roman emperors as the great accountants for the happiness of more men, and men more cultivated than ever before, were entrusted to the motions of a single will, had a special, singular and mysterious relation to the secret councils of heaven, thrice may it be said of the Jew. Palestine, his home, was the central chamber of God's administration. He was at once the grand usher to these glorious courts, the repository of the councils of the Almighty, and the envoy of the divine mandate of the conscience of man. He was the priest and faith-giver to mankind, and as such, in spite of the jibe and jeer, he must ever be considered as occupying a peculiar and sacred relation to all other peoples of this world. Even now, though the Jews have long since ceased to exist as a consolidated nation inhabiting a common country, and for 1800 years have been scattered far and near over the wide earth, their strange customs, their distinct features, personal peculiarities, and their scattered unity, make them still a wonder and an astonishment.

"Though dead as a nation, as we speak of nations, yet they live. Their ideas fill the world and move the wheels of progress, even as the sun, when he sinks behind the western hills, yet fills the heavens with the remnants of his glory. As the destruction of matter in one form is made necessary to its resurrection in another, so it would seem that the perishing of the Jewish nationality was essential in order to insure the universal acceptance and the everlasting establishment of Jewish ideas. Never before was there an instance of such general rejection of the person and character, and the acceptance of the doctrines and dogmas of a people.

"We admire with unlimited admiration the Greek and Roman, but reject with contempt their crude and beastly divinities. We affect to despise the Jew, but accept and adore the pure conception of a God which he taught us, and whose real existence the history of the Jew more than all else establishes. When the court chaplain of Frederick the Great was asked by that bluff monarch for a brief and concise summary of the argument in support of the truths of the Scripture, he instantly replied, with a force to which nothing could be added, 'The Jew, your Majesty, the Jews.'

"I think it may be truthfully said that there is more of average wealth, intelligence and morality among the Jewish people than there is among any other nation of equal numbers in the world. If this be true, if it be half true, when we consider the circumstances under which it has all been brought about, it constitutes in the eyes of thinking men the most remarkable moral phenomenon ever exhibited by any portion of the human family. For not only has the world given the Jew no help, but all that he has ever received, and that but rarely, was to be left alone. To escape the sword, the rack, the fire and utter spoiling of his goods, has indeed for centuries been to him a blessed heritage, as the shadow of a great rock in a weary land.



"The physical persecution of the Jews has measurably ceased among all nations of the highest civilization. There is no longer any proscription left upon their political rights in any land where the English tongue is spoken. I am proud of the fact. But there remains among us an unreasonable prejudice of which I am heartily ashamed. Our toleration will not be complete until we put it away also, as well as the old instruments of physical torture.

"I agree with Lord Macaulay that the Jew is what we have made him. If he is a bad job, in all honesty we should contemplate him as the handiwork of our own civilization. If there be, indeed, guile upon his lips or servility in his manner, we should remember that such are the legitimate fruits of oppression and wrong, and that they have been, since the pride of Judah was broken and his strength scattered, his only means of turning aside the uplifted sword and the poised javelin of him who sought to plunder and slay. Indeed, so long has he schemed and shifted to avoid injustice and cruelty, that we can perceive in him all the restless watchfulness which characterizes the hunted animal. To this day the cast of the Jew's features, in repose, is habitually grave and sad, as though the very plowshares of sorrow had marked its furrows across their faces forever.

" 'And where shall Israel lave her bleeding feet?  
And when shall Zion's songs again seem sweet?  
And Judah's melody once more rejoice  
The heart that leaped before its heavenly voice?  
Tribes of the wandering foot and weary heart,  
How shall ye flee away and be at rest?  
The wild dove hath her nest, the fox his cave,  
Mankind their country—Israel but the grave!' "

"The hardness of Christian prejudice having dissolved, so will that of the Jew. The hammer of persecution having ceased to beat upon the iron mass of their stubbornness, it will cease to consolidate and harden, and the main strength of their exclusion and preservation will have been lost. They will, perhaps, learn that one sentence of our Lord's Prayer which it is said is not to be found in the Talmud, and which is the keynote of the difference between Jew and Gentile: 'Forgive us our trespasses as we forgive them who trespass against us.' If so, they will no longer refuse to sing the songs of Zion because they are captives in a strange land.

"I believe that there is a morning to open yet for the Jews, in heaven's good time, and if that opening shall be the brightest that ever dawned upon a faithful people. May the real spirit of Christ yet be so triumphantly infused amongst those who profess to obey His teachings, that with one voice and one hand they will stay the persecutions and hush the sorrows of these, their wondrous kinsmen, put them forward into the places of honor and the homes of love, so that all the lands in which they dwell shall be not home to them alone, but to all the children of men who, through much tribulation and with heroic manhood, have waited this dawning with a faith whose constant cry through all the dreary watches of the night has been: 'Though he slay me, yet will I trust in Him.' "

—*Zebulon Blair Vance. A North Carolina lawyer; Member of Congress, 1858-61; Governor N. C., 1862-65; U. S. Senator, 1870-72, but on account of participating in the Confederate army was refused admission; again Governor, 1877-78; from 1879-94, was again U. S. Senator. The above extract is from a lecture, delivered in 1882, and thereafter in various places, and is called his greatest platform discourse.*



## GEORGE G. VEST (1830-1904), Missouri

### EULOGY ON THE DOG

"Gentlemen of the jury: The best human friend a man has in this world may turn against him and become his enemy. His son or daughter that he has reared with loving care may prove ungrateful. Those who are nearest and dearest to us, those whom we trust with our happiness and our good name may become traitors to their faith. The money that a man has he may lose. It flies from him, perhaps, when he needs it most. A man's reputation may be sacrificed in a moment of ill-considered action. The people who are prone to fall on their knees to do us honor when success is with us may be the first to throw the stone of malice when failure settles its cloud upon our heads. The one absolutely unselfish friend that a man can have in this selfish world, the one that never deceives him, the one that never proves ungrateful and treacherous, is his dog.

"A man's dog stands by him in prosperity and in poverty, in health and in sickness. He will sleep on the cold ground where the wintry wind blows and the snow drifts fiercely, if only he may be near his master's side. He will kiss the hand that has no food to offer. He will lick the wounds and sores that come in encounter with the roughness of the world. He guards the sleep of his pauper master as if he were a prince. When all other friends desert, he remains. When riches take wings and reputation falls to pieces, he is as constant in his love as the sun in its journeys through the heavens. If fortune drives the master forth an outcast in the world, friendless and homeless, the faithful dog asks no higher privilege than that of accompanying, to guard against danger, to fight against his enemies, and when the last scene of all comes, and his body is laid away in the cold ground, no matter if all other friends pursue their way, there by the graveside may the noble dog be found, his head between his paws, his eyes sad but open in alert watchfulness, faithful and true even in death."

*—George G. Vest for the plaintiff in a suit for the killing of a dog, tried in Northern Missouri. The jury returned a verdict for \$200, the amount sued for, in about two minutes. The defense was represented by Senator Francis M. Cockrell.*

### THE DEMOCRATIC PARTY, AS EXEMPLIFIED BY JEFFERSON

"The Democratic party holds that there should be no partnership between the government and any individual or class, but all the benefits and burdens of the government should be equally distributed, every citizen being protected in life, liberty and property, and made the architect of his own fortune.

"It holds that all property should be taxed in proportion to the protection received from the government; and it does not believe in the system under which a capitalist pays no more upon his hundreds of millions to support the national government than does the poorest citizen who must in war risk life and limb to protect these millions.

"The Democratic party is national, not sectional, and cannot exist on one issue. It is coexistent with the whole Union and with the autonomy of our government. You may believe in the single gold standard and I in the free coinage of silver at the ratio of 16 to 1, but if we are Jeffersonian Democrats there is no other political home for a hundred years in peace and war, sunshine and shadow, in every township, county and State of the entire Union.



"No greater calamity could come to this country or the world than the disruption of the great organization which was founded by the author of the Declaration of Independence. Upon the canvass of the past Washington and Jefferson stand forth the central figures in our struggle for independence. The character of the former was so rounded and justly proportioned that so long as our country lives, or a single community of Americans can be found, Washington will be 'First in war, first in peace and first in the hearts of his countrymen.'

"To Washington we are more indebted than to any one man for national existence; but what availed the heroism of Bunker Hill, the sufferings of Valley Forge, or the triumph of Yorktown, if the government they established had been but an imitation of the monarchy from which we had separated? To Jefferson we owe eternal gratitude for his sublime confidence in popular government, and his unfaltering courage in defending at all times and in all places the great truth, that 'All governments derive their just powers from the consent of the governed.' "

"The love of liberty is found not in palaces, but with the poor and oppressed. It flutters in the heart of the caged bird, and sighs with the worn and wasted prisoner in his dungeon. It has gone with martyrs to the stake, and kissed their burning lips as the tortured spirit winged its flight to God!

"In the temple of this deity Jefferson was high priest! For myself, I worship no mortal man, living or dead; but if I could kneel at such a shrine, it would be with uncovered head and loving heart at the grave of Thomas Jefferson."

—*'Jefferson's Passports to Immortality,' before the Jefferson Club of St. Louis, Mo., Oct. 31, 1895, at the unveiling of the bronze bust of Thos. Jefferson, by Benjamin Harney.*

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## LIBERTY ENLIGHTENING THE WORLD

"No doubt 'Liberty enlightening the World' in modern history finds its greatest instance in that torch which was lighted here; but from the enthusiasm and the inexorable logic of French philosophy on the 'Equality of Man' was furnished we can never say how much of the zeal and of the courage that enabled our forefathers to shape the institutions of equality and liberty here, and all can mark the reaction upon France by which our interests, our prosperity under them encouraged, ennobled and maintained the struggle for liberty there which overthrew ancient establishments and raised in their place new. And now both countries, at least, stand on the same happy combination of liberty regulated by law and law enlightened by liberty. And this great structure, emblem of so much else, example of so much else, guide to so much else, yet this emblem, this example, this guide is of the union between the genius and enthusiasm of liberty, the graceful statue and the massive and compact pedestal of our own granite by which it is upheld. Liberty can only be supported by solid and sober institutions, founded upon law as built upon a rock; and the structure solid and sober which sustains it, if liberty has fled, is but a shapeless and unsightly mass that is no longer worthy of respect as a structure to be torn apart until it can better be rebuilt as the home of liberty."

—*Wm. M. Evarts to the officers of the French national ship 'Isere,' which brought over the Bartholdi statue from France, at Chamber of Commerce, N. Y. City, June 24, 1885.*



DANIEL W. VOORHEES (1827-1897), Indiana

THE SEDUCER OF BLACK'S SISTER

"His crime is a thousandfold blacker than murder, yet there are no scaffolds for him. For the betrayed and ruined woman there is nothing left in life except the pain of living. The joy of existence never comes again. When we see the autumn leaf falling to the ground, and the white shroud of winter over the face of the fields, we are blest with the certain hope that the soft air of spring will after a little come back to us and renew in our midst the splendors of the beautiful world; that the fresh, green sward, adorned with flowers, will again spread at our feet, and the deep foliage of the forest will leave its bright canopy over our heads. But to the soul that has loved, trusted and lost there comes no second spring. The solemn sky of autumn and the chilling winds of the winter alone remain to her. No glad and golden summer awaits her in the future. A scorched and barren desert without verdure, without trees or plant, or blossom, or shrub, or one single cooling fountain at which to rest in all the desolate pilgrimage, lies before her tired and faltering footsteps. She makes the rest of her journey, too, alone. The leper's taint is upon her in the eyes of the world, and friends fall off and avert their faces. And with such a spectacle as this before you, are you willing to say that the man who thus curses the entire existence of one whose sole offense has been her blind, unreasoning devotion to him should pass unscathed and unwhipped of justice? Such a decision would spurn and trample under your feet the holiest and tenderest interests, affections and loves of humanity, and would blaspheme all the attributes of a just and righteous God. Does some one, however, who is careful of the life of the destroyer, profane his subject with a suggestion of damages as a measure of legal redress? The bare thought stifles an elevated nature with feelings of loathing and disgust. Who can estimate the value of family honor? Who shall remunerate you for the stolen and defiled members of your household? As well might you attempt to fix the value of a lost and ruined soul in hell. 'What will a man not give for his own soul?' And will he not give the same or even a higher ransom, if need be, for the salvation of wife, mother, daughter, sister? Without them in their purity the regions of time and earth would be filled with fiery tortures, and the condition of fallen spirits in eternity could be no worse. Can you pay the husband for his wife, the son for his mother, the brother for his sister, and the father for his daughter? Can you make atonement to the heartbroken woman herself for violated vows and wanton perfidy? Can she or any of those that love her be redeemed to their original estate by the assessment of damages? A division of property between the social outlaw and his prey may be just, but as a mode of punishment it is vain and void of meaning. Who, also, would have such gain? If a judgment was taken in favor of the husband or father, in whose behalf an action lies, what a revolting acquisition to his fortune it would be! In what way would he expend it? If the husband invests it in 'ships that go down to the sea,' he makes his ventures into foreign lands and distant waters upon the wages rendered to him by a jury for his wife's infamy. He traffics upon the honor of her whose dear and precious head once lay in its sweet sleep of fidelity upon his confiding heart. If his argosies come home from successful voyages, they are freighted with gains founded upon the dishonor of his bed, the debasement of his name and the overthrow of all his fireside gods. His bills of lading stare at him as the reward of his submission to the lowest depths of degradation ever fathomed by the most abject spirits of the human race. The articles of merchandise which he unpacks



and offers in exchange at his counter would salute him perpetually of his hideous bereavement. The ghost of his murdered peace would arise and confront him wherever he turned."

—*Daniel W. Voorhees in Defense of Crawford Black for the killing of W. W. McKaig, Jr., tried in Frederick City, Md., 1871. The defendant was promptly acquitted by the jury.*

## IMMORTALITY

"'Shall this mortal put on immortality; shall we meet again to part no more?' The philosophy of ancient paganism and the scientific thought of modern unbelief have alike tried, and tried in vain, to wrench apart the iron jaws of death and exhort an answer from the dumb and silent mystery of the tomb. Not a gleam of light, not a ray of hope, not even the twinkling of a distant star comes from the great intellectual school of materialism. There can, indeed, be but one answer to this tremendous question, so vital, so personal to all. The advent of the Messiah, the inhabitant of two worlds coming from the realms of eternity to the realms of time, returning whence He came, triumphing over death and robbing the grave of its victory, furnishes absolute proof beyond denial or discussion that an immortal world exists and an immortal life. He who walked the waters and made the winds be still, alone of all the manifestations of power this earth has ever known can banish the secret dread, the inward horror of falling into naught. Plato reasoned well, but the immortality of the soul, which was to him merely a pleasing hope, a dim uncertainty, becomes a proven, fixed reality by the coming of the Messiah; by the opening of the King's highway between the two worlds, the visible and the invisible. In His divinity He came and He went; He passed from one world to the other both ways; the route He proclaimed remains, linking time and eternity together and affording to the human soul its only safe assurance that he will live hereafter. In view of that divinity, therefore, we listen without wonder or doubt to His own grand conclusions of the whole matter, to His own lofty anthem and promise of eternal life. 'I am the resurrection and the life; he that believeth in me, though he were dead, yet shall he live; and whosoever liveth and believeth in me shall never die.'

"And who is he that would gainsay this pean of victory for the human soul in the hope of immortality? Who is he that would silence its strains of peace? Who is he that would rob the parting soul of its music, the beloved faces that have gone before, making welcome from the sky? Who is he that would draw the black curtains of annihilation around the dying bed and bolt and bar the portals of the tomb with cold despair? Who is he that would force entrance into the chamber of death to blight and destroy that sublime faith which alone can pluck tears of anguish which come as a comforter in every trial, which wreathes with smiles the dying face, even in the bright morning of life, in its noonday prime and as the sun of old age is going down. Far more merciful would it be to put poison in the wells and fountains of burning deserts where perishing travelers stoop to drink.

"If life is to end here, a mere span on the dial plate of time, a fleeting shadow that abides not; if life here is but the insect existence of a single summer season, then indeed may the peasant and the philosopher and all classes between them make intense and prolonged inquiry whether such a life is worth living, whether any intelligent being with free choice would enter upon its brief unsatisfying scenes, knowing their inevitable termination to be in the black darkness of a sunless, starless, incomprehensible nihilism; in a waveless, motionless, frozen, dead sea of annihilation.

"But away with this vision of gloom, this dream of horror, this nightmare of the soul! The Christian faith neither darkens nor discredits



the destiny of the human race; its mission is one of hope, promise and happiness in all pathways of life. To all the children of men of every faith it comes in blessings; to the blind agnostic, who is proud of his blindness, to the groping unbeliever, who boasts of his darkness, and even to the eloquent scoffer, with his bitter tongue, as well as to the faithful followers of the cross, to one and all it comes with messages of truth and love, mercy and everlasting life in the name of the divine Master."

—*The above was sent by Daniel W. Voorhees, the author of it, to Dr. Stephen A. Northup, of Kansas City, Kansas, for that minister's book, "A Cloud of Witnesses."*

Mr. Voorhees was born in Butler Co., Ohio, 1827, and died in Terre Haute, Ind., 1897. He had a wide reputation as an orator and was popularly known as "The Tall Sycamore of the Wabash."

## RETORT TO SENATOR INGALLS

"The Senator from Kansas (Ingalls, who had just made a denunciatory speech against Voorhees' war record) reminds one of a peacock on a barn-yard fence, posing of a summer's morning, looking at his own feathers as they gleamed in the sun, and vocalizing the whole neighborhood with his harsh, unmusical and unmeaning cries, unmindful of the fact that there are more useful fowls in the barn-yard."

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## THE ROYAL CORN

"Glorious corn, that more than all the sisters of the field wears tropic garments. Nor on the shore of Nilus or of Ind does nature dress her forms more splendidly. My God, to live again that time when for me half the world was good and the other half unknown! And now again, the corn, that in its kernel holds the strength that shall, (in the body of the man refreshed), subdue the forest and compel response from every stubborn field, or, shining in the eye of beauty, make blossoms of her cheeks and jewels of her lips and thus make for man the greatest inspiration, to well-doing—the hope of companionship of that sacred, warm and well embodied soul, a woman.

"Aye, the corn, the Royal Corn, within whose yellow heart there is of health and strength for all the nations. The corn triumphant, that with the aid of man hath made victorious procession across the tufted plain and laid foundation for the social excellence that is and is to be. This glorious plant transmuted by the alchemy of God, sustains the warrior in battle, the poet in song, and strengthens everywhere the thousand arms that work the purposes of life. Oh, that I had the voice of song, or skill to translate into tones the harmonies, the symphonies and oratorios that roll across my soul, when standing sometimes by day and sometimes by night upon the borders of this verdant sea. I note a world of promise and then before one-half the year is gone I view its fruition and see its heaped gold await the need of man. Majestic, fruitful, wondrous plant! Thou greatest among the manifestations of the wisdom and love of God that may be seen in all the fields or upon the hillsides, or in the valleys."

—*Richard Oglesby, of Illinois, to the Fellowship Club, Chicago, Sep. 9, 1894.*



## TIMOTHY WALKER (1806-1856) Ohio

### DEFENDING BAD CAUSE

"There is not, perhaps, a more difficult question in casuistry than that which every lawyer has to decide in determining the nature and extent of his professional obligations. We are, however, to remember at the outset, that in becoming attorneys, we do not cease to be moral agents; that in pledging ourselves to our clients, we do not also pledge to them our consciences; and therefore, in requiring us to do for them what we should blush to think of doing for ourselves. It is also obvious that even on selfish principles, honesty is the best policy for us, as it is for all other men; and, therefore, that in consultations with clients, we are not only morally bound to tell them frankly our real opinions, but it is manifestly our interests so to do, because otherwise we shall soon cease to be consulted. Again, it is clear that in conducting proceedings through the various stages of litigation, we can never be justified in attempting to mislead the court or jury, by wilfully misrepresenting the law or the facts. Thus far there can be no room for hesitation. But, if we believe that our client has the wrong side, and have candidly told him so, are we then justified in undertaking his cause, if he should persist in having it litigated? This is a question of no small difficulty, and it arises in two classes of cases; namely, *first*, when we believe the law to be against our client; and *secondly*, when though the law may be with him, the abstract justice of the case appears to be against him. With regard to the first, when we think the law to be against him, it would seem that after so informing him, if he should still persist, we need not hesitate to act for him; because we are not infallible, and peradventure the law may turn out to be the other way; or he may have justice on his side, though the law may seem against him, and in either case he ought not to be cut off from the chances of litigation. The chief difficulty then arises in the second class of cases, where we believe justice and right to be against our client, though the law may be with him. But even here, and I have come to the conclusion that no principle of moral obligation prohibits from prosecuting his cause. In the first place, I am not an infallible judge of right and wrong, and possibly I may be mistaken; but at all events, I am not his conscience-keeper. I undertake only to assert his legal rights; and if, in so doing, I make use of no chicanery or deception; I come out of the cause with clean hands. The question of abstract justice is with him, and not with me; and I am as much justified in conducting his cause, as the judge is in deciding it for him. But there is a more comprehensive view conducing to the same result. Every man, as a general condition of the social compact, has a right to have his case fairly presented before the court; and it is the province of counsel to assist him in so doing. Now altho there may be particular cases, which considered by themselves ought not to be prosecuted, yet as no line of demarkation can be drawn beforehand to indicate which these are; if it were the duty of counsel to decide each case the preliminary moral question, whether they ought to undertake it, their decision against any case would be prejudging of its merits, which might operate prejudicially upon the final result; and on this account it is a good general rule that counsel are not to be held responsible for the moral character of the cause they advocate, but only for the manner in which they discharge their duty."—In his *"American Law,"* pp. 672-3, written in 1837. Judge

Walker with J. C. Wright, founded in Cincinnati, O., a law school in 1835 of which Walker was professor till 1844. In 1843 he founded *"The Western Law Journal,"* of which he was editor for several years.



R. M. WANAMAKER, Ohio

## WE THE PEOPLE, OR WE THE JUDGES

"During the first century of our Government the Supreme Court of the U. S. confined its doctrine of nullifying legislative acts chiefly and sparingly to questions pertaining to the organization of courts and judicial procedure; questions relating to the exercise of powers not delegated in the Constitution; interference with state powers; ex post facto laws; laws impairing obligations of contract; denial of trial by jury and other fundamental individual rights, as recognized generally by the laws of all civilized lands. But following the adoption of the 14th Amendment, the nullified laws partook of quite a different character. It would be difficult to classify all of them, but the large majority of the laws were nullified on the claim that they were in conflict with some provision of the 14th Amendment, either the 'due process' clause or 'equal protection of the laws' clause, or both.

" \* \* \* Shall this growing political power under the name of the Supreme Court of the U. S. go on unchallenged and uncontrolled as the guardian of our American democracy, and as a substitute for 'We the people,' not only in our Federal Government but even in our state and municipal governments? \* \* \* No state statute can be passed today without asking the question: Will the Supreme Court let it stand? No city ordinance can be passed today without asking the question: Will the Supreme Court of the U. S. let it stand? But why have states at all if the states shall be mere shapes and shadows; if the states shall not be sovereign in state and affairs; if the states must all the while anticipate the viewpoint and judgment of the Supreme Court of the U. S., and finally be forced to surrender to the court's view and veto on public policies?

"A judicial body was what was intended to be created by the Constitution of the U. S.; but, instead, we have a political body passing on political questions, not partisan ones, great questions of public policy affecting not only national interests but state and even municipal interests, all the while exercising over them the right to veto, the right to supervise, the right to modify, the right to destroy. And when the people once thoroughly wake up, will they not consider the suggestion of the learned justice (Hughes) to 'swiftly demand and set up a 'different system?'

"Says Melville D. Post, 'Out of 77 consecutive decisions rendered by the Supreme Court of the U. S., 29 were given by a vote of 5 to 4 and 46 by a vote of 6 to 3; in only 2 instances did as many as 7 out of the 9 justices agree.' (This was written Dec. 18, 1915).

"In cases involving public policies, as defined by state and Federal statute, cases involving questions of eminent domain, taxation, police power, and the like, which are inherent and sovereign in the domestic affairs of the State and the home-rule affairs of our municipalities, questions that are more of a political nature than legal, why should not at least a three-fourths vote be required by the Supreme Court of the U. S. on the fact of clear conflict, before the statute or ordinance should be nullified? When the statute clearly permits what the Constitution clearly prohibits, or the statute clearly prohibits what the Constitution clearly permits, you then have, in such a situation that clear conflict where both statute and Constitution cannot stand. Of course the statute should yield to the fundamental law, the Constitution. But who shall be the judge as to such conflict? We have seen that in England, Parliament alone determines this question, not the courts. In France it is the Senate and Chamber of Deputies, not the judges. And in every



leading nation of the world, save the U. S., it is likewise the legislative body that determines whether or not there is such clear conflict; and the action of such legislative bodies is final.

"The remedy is in the Constitution without amendment, in the Federal Judicial Article III, Section 2, in this language:

" 'In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party, the Supreme Court shall have original Jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, *with such Exceptions and under such Regulations as the Congress shall make.*' If now Congress should pass an act declaring that no state or Federal Statute should be declared null and void, as contrary to public policy or contrary to any state constitution or the Federal Constitution, unless by the concurrence of a three-fourths vote of the Supreme Court of the U. S., the evil would be very largely if not entirely remedied.

\* \* \* After the passage of such a law by Congress it will then be up to the people of the several states to limit their own courts, as to nullifying statute, by some similar Constitutional provision; but until the Federal courts are restrained such provision for the state courts will be of practically no avail."—*The Supreme Court of Ohio. Saturday Evening Post, June 10, 1916.*

ALLEN G. THURMAN: "Senator Thurman is an Ajax, with a helmet and spear, to thunder along the line, and deal death-giving blows to the foe whom he meets."

—*Durbin Ward, in seconding the nomination of Thurman's nomination for Vice-President, 1884.*

Durbin Ward, lawyer and soldier, was born at Augusta, Bracken Co., Ky., Feb. 11, 1819; moved to Lebanon, O., and studied law with Judge Smith, completing his studies with Governor Thomas Corwin, with whom he entered into partnership in 1843, which was dissolved when Ward became prosecuting attorney of Warren Co., 1845-51. Was a member of the Democratic Convention, which met in Charleston, S. C., in 1860 and which reassembled in Baltimore and nominated S. A. Douglas that same year. In 1884, he presented Allen G. Thurman as a candidate for President of the U. S., on the Democratic ticket. Mr. Ward died at Lebanon, O., May 22, 1886.

### JUSTIN McCARTHY ON O'CONNELL

"O'Connell represented all the impulsiveness, the quick-changing emotions, the passionate, exaggerated loves and hatreds, the heedlessness of statement, the tendency to confound impressions with facts, the ebullient humor—all the other qualities that are exceptionally characteristic of the Celt. The Irish people were the audience to which O'Connell habitually played. It may, indeed, be said that even in playing to this audience he commonly played to the gallery. As the orator of a popular assembly, as the orator of a monster meeting, he probably never had an equal in these countries. He had many of the physical endowments that are especially favorable to success in such a sphere. He had a herculean frame, a stately presence, a face capable of expressing easily and effectively the most rapid alterations of mood, a voice which all admit to have been almost unrivaled for strength and sweetness. Its power, its pathos, its passion, its music, have been described in words of positive rapture by men who detested O'Connell, and who would rather, if they could, have denied to him any claim on public attention, even in the matter of voice. He spoke without studied preparation, and of course had all the defects of such a style."

—*1 McCarthy's 'History of Our Own Times,' 213-214.*



## EMORY WASHBURN (1800-1877), Massachusetts

### LAW PRACTICE

“Historically, the instances are rare where an earnest, right-minded young man, with fair natural abilities and a reasonable share of industry, has failed in the end to earn a livelihood in the profession of the law, and with it the confidence and respect of his fellow-citizens.”

—‘*Study, etc., of the Law,*’ 92.

### LAWYERS AND LAW

“No civilization has ever been able to subsist without law; nor do I believe the ends of society, under a free government, could be attained without the instrumentalities of the law, and among them a class of advocates.”—‘*Study, etc., of the Law,*’ 256.

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### DESCRIPTION OF JOHN McSWEENEY

“His manners were persuasive and captivating before he opened his mouth. He possessed a bold confidence that took his adversary by storm before a shot was fired, of wonderful resources, looking far ahead. You had to watch him closely, or ere you were aware he had seized his objective point, and put it down in ink. He used his own witnesses with a wonderful dexterity—terrified with the frown of apparent rage, put a favorable construction on a damaging theory, and a liar never escaped the keenness of his intellectual sword. To those who did not know him, he seemed to lack something of geniality and *suaviter in modo*, but in a company of friends, and in his home, his manners were tender and gentle. As a conversationalist, he was a fountain where the Graces might have loved to pause and sip. He was a master of style, free from mannerisms. His language was the pure Saxon. His control and modulation of his voice was, in some respects, the secret of his power. He understood the pitch and quality of tone in every shade of thought and emotion. If he desired to be sad or plaintive, the modulation was minor or semi-tonic; if inclined to irony, his voice waived upward and downward; if inclined to expressions of awe and sublimity, it had a level movement, from note to note, like the repeated sounds of a deep toned bell. Sober in pathos, furious in rapartee, jolly in humor, terrific in invective.”

—*The Collector, of Detroit, Mich., at time of his death, 1890.*

### SENATOR CALVIN S. BRICE ON McSWEENEY

“I have listened to Depew, Hoadly, Ingersoll, Choate and all the other charming speakers; but no one of them has ever so delighted me as did McSweeney in every instant of his two hour’s speech at Canton last Thursday night.”



A. R. WEBBER (1852- ), Ohio

DEAD CHURCH: "Is one in which a tear has not been shed for 40 years."

### THE INFLUENCE OF LAWYERS UPON OUR REPUBLIC

"Our Republic, the greatest government in the world, the hope of humanity, conceived and brought forth but yesterday, wrought from the brain of lawyers, has been so interpreted and stabilized by them that even a great Civil War failed to wreck it.

"The impassioned orator and lawyer, Patrick Henry, fired the colonies to revolt, in that immortal speech, ending with, 'Give me liberty or give me death!' Words which encircled the globe. That colossus in debate, John Adams, the lawyer, laid the foundation of the Nation, in the Brain-tree Resolutions, adopted by Massachusetts and other colonies. The Declaration of Independence, freeing us from the oppressions of Great Britain, was penned by Thomas Jefferson, the lawyer, at the age of thirty-three. The Federalist, by many thought to be our greatest State paper, was the joint work of Jay, our first Chief Justice of the Supreme Court of the United States, and legal adviser of Washington, Hamilton, the international lawyer, 'who touched the dead corpse of the Nation's credit, and it stood upon its feet,' and Madison, the constructive statesman and master constitutional lawyer. Lastly, the Constitution, itself, our Magna Charta, is the work of lawyers and statesmen, made afterwards what it really is, the arbiter of our political destinies, as interpreted by the great opinions of Jay, Ellsworth, Rutledge and especially of Marshall, and this in its formative period.

"The majority of both Houses of Congress, and the Legislatures of the several States, have been and are lawyers. Abraham Lincoln, at the helm, during the dark days of the Civil War, wrote the Emancipation Proclamation, removing the shackles from 4,000,000 bondmen, was a lawyer and a humanitarian, whose fame fills the world. All of our twenty-eight Presidents of the Nation, save four, were lawyers.

"An old minister used to visit my law office and preach. I asked him why he did not call on other business men with his message. He prophetically replied: 'I am directed by the Almighty to go forth and preach the Gospel to the rulers of the Nation; the lawyers are the rulers; always have been; always will be. By their fruits ye shall know them!' He spoke wiser than he knew.

"Tested by this inexorable law, what greater tribute can be paid to the legal profession than giving to the world the first *real government* ever instituted among men, which stands absolutely, in its principles, for pure democracy?"

"These facts should never be overlooked or forgotten by any attorney worthy of the name. If lawyers were the founders of the nation, why should they not be preservers thereof. If it is wrecked, then as leaders by failing to do their duty, will be the authors of its ruin."

—From a letter to the Compiler, Dec., 1921, by A. R. Webber, Ex-Judge of Court of Common Pleas, and Ex-Congressman of the United States.

### LIVES OF MEN WORTH WHILE

"The orator is now digging up the lives of John Brown, Phillips and Garrison as subjects for his inspiration in swaying his audiences to a better thought and higher plane. Two of them lived in poverty, and all their names were for forty years a hissing and a by-word. Lovejoy was at twenty-seven shot down like a dog in the streets of Alton, Ill., for publishing a little paper denouncing slavery, and that by the respectable



of the town. This generation has erected to his memory the tallest monument in Illinois. Three of his little hand-presses were broken in pieces and given to the great maw of the Mississippi river. John Brown was hanged for the same truth, since you and I come upon the map, for it was in the fall of 1859 his feet lost their hold upon the scaffold. Since that time eight persons have at different times 'taken their pen in hand' and written his biography. Broken legs are just as they were in Abraham's time, but the means of locomotion have changed from the ox to lightning speed over land and water and through the air. From the sickle to the reaper with its steel fingers is a marvelous leap, but still more wondrous is the fact, when we consider that from Adam till you and I appeared, the sickle did it all. The point in the Darius Green flying-machine poem was the impossible, and hence the conceiver of such a machine is pictured by the author as a simpleton. The kite in the air is a flying machine, propelled through the unseen buoy by the string, in place of the motor. When you were in Oberlin College, electricity was a plaything, and the apparatus of the professor a toy. Put wings on the gasoline motor-boat and you have a flying-machine. Between the motor-boat and the flying-machine is the difference between the fish and the bird, so far as locomotion is concerned."

—*From a letter to the Author of this work, Aug. 26, 1911.*

### THE PEOPLE TO WHOM WE OWE WHAT WE HAVE

"Such characters as the men who founded Oberlin College, and similar institutions of learning, laid the foundations on the true principles of democracy, as declared in the Declaration of Independence, have always appealed to me as real and true, the people to whom we owe what we have. Webster and that type of men in their hearts believed one thing, when it came to slavery and temperance questions, and talked and lived contrary thereto. They were willing to sell out their real manhood for political positions; and the result was that they have gone down in history, great as they were, stained by their deceptions. The only thing that has saved them from utter oblivion is the fact that they stood by the Union.

"Webster, in his 4th of March speech in 1850, turned his back to the North and his face to the South, and endorsed the Fugitive Slave Law, bidding for the Southern vote; he received for so doing just what he deserved, failure to secure the Presidency; and Clay, while he contended that slavery was wrong, continued to hold his fellow-men in bondage to his dying hour. 'Whatsoever a man soweth that shall he reap.' Whether he be great or small, known or unknown, the men who really and truly live in the hearts of their countrymen in the final analysis are such men as Garrison, Phillips, the Tappens, John Brown and Carrie Nation, Charles Finney, and others of that type.

"They fought without salaries, and without money reward, or the hope thereof. No man on a salary can be truly and really a reformer. If he is a *real* reformer, he is such on his own motion, and at his own expense. You may not agree with me in all these things, but such is my settled conviction, after a thorough study of that class, and the results obtained. Oberlin College was planted on the platform of co-education, and paid no attention and made no distinction as to color, race or previous condition of servitude, and was against the American saloon. For a long term of years she was a hissing and a by-word because of this. Not only by the masses but by the so-called statesmen at Washington, from the President down, and by all the Colleges in America; even by the pulpits, almost universally. She has lived to see the day when they all sit at her feet, confessing she was right. So, I say, 'Nothing is ever settled until it is settled right.' "

—*From an address on 'The Founding of Oberlin College, 1920.*



## DANIEL WEBSTER (1782-1852), Massachusetts

### THE LAW

"I love our common profession, and love all who honor it. I regard it as the great ornament, and one of the chief defenses and securities, of our institutions. It is indispensable to and conservative of public liberty. I honor it from the bottom of my heart. If I am anything it is the law, that notable profession, that sublime science which we all pursue, that has made me what I am. It has been my ambition, coeval with my early manhood, nay, with my youth, to be thought worthy to be ranked under the banner of that profession. The law has been my chief stimulus, my controlling and abiding hope, nay, I might almost say, my presiding genius and guardian angel. \* \* \* Although it may not always, although it does not often in this country, lead to wealth, it does what is infinitely better and more important, it enables us to do good in our own day and generation. I repeat, it is not calculated to yield its members the greatest fortunes. It seldom, in this respect, fulfills the sanguine expectations of beginners in the toilsome path. After twenty-five years' observation, I can give it as the condensed history of most, if not all, good lawyers, that they lived well and died poor."

—*Daniel Webster, Address to the Charleston, S. C., Bar, May 12, 1847.*

### THE WIFE

"May it please your Honors, there is nothing upon the earth that can compare with the attachment of a wife; no creature who for the object of her love is so indomitable, so persevering, so ready to suffer and to die. Under the most depressing circumstances, woman's weakness becomes fearless courage; all her shrinking and sinking passes away, and her spirit acquires the firmness of marble, adamantine firmness, when circumstances drive her to put forth all her affection."

—*Daniel Webster, in the Goodyear Rubber case, in speaking of the hardships Mrs. Goodyear endured, during years of privation, while he was perfecting his patents.*

### THE HUMAN HAND

"His (man's) port is erect, his face toward Heaven, and he is furnished with limbs which are not absolutely necessary to his support or locomotion and which are at once powerful, flexible, capable of innumerable modes and varieties of motion and terminated by an instrument of wonderful, heavenly workmanship, the human hand. This marvelous physical conformation gives man the power of acting with great effect upon external objects, in pursuance of the suggestions of his understanding, and of applying the results of his reasoning power to his own purposes. Without this particular formation, he would not be a man, with whatever sagacity he might have been endowed. \* \* \* The power of a man's arm is an early lesson among the studies of primitive man. This is animal strength; and from this he rises to the conception of employing, for his own use, the strength of other animals. A stone, impelled by the power of his arm, he finds will produce a greater effect than the arm itself; this is a species of mechanical power. The effect results from a combination of the moving force with the gravity of a heavy body. The limb of a tree is a rude but powerful instrument; it is a lever. And the mechanical power being all discovered, like other natural qualities,



by induction (I use the word as Bacon used it) or experience, and not by any reasoning *a priori*, their progress has kept pace with the general civilization and education of nations."

—*Daniel Webster, from lecture before Boston Mechanic's Institute, Nov. 12, 1828.*

## MOTION

"Motion or change of place, regular or occasional, belongs to all or most of the things which are around us. Animal life everywhere moves; the earth itself has its motion, and its complexities of motion; the ocean heaves and subsides; rivers run, lingering or rushing, to the sea and the air which we breathe moves and acts with mighty power. Motion thus pertaining to the physical objects which surround us is the exhaustless fountain whence philosophy draws the means by which, in various degrees and endless forms, natural agencies and the tendencies of inert matter are brought so the succor and assistance of human strength. It is the object of mechanical contrivance to modify motion, to produce it in new forms, to direct it to new purposes; to multiply its uses, by its means to do better that which human strength could do without its aid, and to perform that, also, which such strength, unassisted by art could not perform. Motion itself is but the result of force; or, in other words, force is defined to be whatever tends to produce motion. The operation of forces, therefore, on bodies, is the broad field which is open for that philosophical examination, the results of which it is the business of mechanical contrivance to apply. The leading forces or sources of motion are, as is well known, the power of animals, gravity, heat, the winds and water. There are various others of less power, of more difficult application. Mechanical philosophy, therefore, may be said to be that science which instructs in the knowledge of natural moving powers, animate or inanimate; in the manner of modifying those powers, and of increasing the intensity of some of them by artificial means, such as heat and electricity; and in applying the varieties of force and motion, thus derived from natural agencies, to the arts of life. This is the object of mechanical philosophy."—*Daniel Webster, Boston Mechanics' Institute, Nov. 12, 1828.*

## ELOQUENCE

"When public bodies are to be addressed on momentous occasions, when great interests are at stake, and strong passions are excited, nothing is valuable in speech farther than as it is connected with high intellectual and moral endowments. Clearness, force and earnestness does not consist in speech. It cannot be brought from far. Labor and learning may toil for it, but they will toil in vain. Words and phrases may be marshalled in every way, but they cannot compass it. It must exist in the man, in the subject, and in the occasion. Affected passion, intense expression, the pomp of declamation, all may aspire to it: they cannot reach it. It comes, if it comes at all, like the outbreak of a fountain from the earth, or the bursting forth of volcanic fires, with spontaneous, original, native force. The graces taught in the schools, the costly ornaments and studied contrivances of speech, shock, and disgust men, when their own lives, and the fate of their wives, their children and their country, hang on the decision of the hour. Then words have lost their power, rhetoric is vain, and all elaborate oratory contemptible. Even genius itself then feels rebuked and subdued, as in the presence of high qualities. The patriotism is eloquent; then self-devotion is eloquent. The clear conception, out-running the deductions of logic, the higher purpose, the firm resolve, the dauntless spirit, speaking on the tongue beaming from the eye, informing every feature and urging the whole man



onward, right onward to his object, this, this is eloquence, or rather it is something greater and higher than all eloquence, it is action, noble, sublime, god-like action."

—*Daniel Webster, on Adams and Jefferson, Boston, Aug. 2, 1826.*

### MAN'S INFLUENCE AFTER DEATH

"But how little is there of the great and good which can die! To their country they yet live, and live forever. The life in all that perpetuates the remembrance of men on earth; in the recorded proofs of their own great actions in the offspring of their intellect, in the deep engraved lines of public gratitude, and in the respect and homage of mankind. They live in their example; and they live, emphatically, and will live in the influence which their lives and efforts, their principles and opinions now exercise, and will continue to exercise, on the affairs of men, not only in their own country, but throughout the civilized world. A superior and commanding human intellect, a truly great man, when Heaven vouchsafes so rare a gift, is not a temporary flame, burning brightly for a while, and then giving place to returning darkness. It is rather a spark of fervent heat, as well as radiant light, with power to enkindle the common mass of human mind; so that when it glimmers in its own decay, and finally goes out in death, no light follows, but it leaves the world all light, all on fire, from the potent contact of its own spirit. Bacon died, but the human understanding, roused by the touch of his miraculous wand to a perception of the true philosophy and the just mode of inquiring after truth, has kept on its course successively and gloriously. Newton died; yet the courses of the spheres are still known, and they yet move on by the laws which he discovered, and in the orbits which he saw, and described for them, in the infinity of space."

—*Daniel Webster, "Adams and Jefferson," in Faneuil Hall, Boston, Aug. 2, '28.*

### ANCIENTS—MECHANICAL PHILOSOPHY

"The Greeks were a people whose genius seems to have been equally fitted for the investigations of science and the works of imagination. The immortal Euclid, centuries before our era, composed his *Elements of Geometry*; a work which, for 2000 years, has been, and still continues to be, a text-book for instruction in that science. A history of mechanical philosophy, however, would not begin with Greece. There is a wonder beyond Greece. Higher up in the annals of mankind, nearer, far nearer, to the origin of our races, out of all reach of letters, beyond the sources of tradition, beyond all history, except what remains in the monuments of her own art, stands Egypt, the mother of nations! Egypt! Thebes! The Labyrinth! The Pyramids! Who shall explain the mysteries which these names suggest? The Pyramids! Who can inform us whether it was by mere numbers, and patience, and labor, aided perhaps by the simple lever, or if not, by what forgotten combination of powers, by what unknown machines, mass was thus aggregated to mass, and quarry piled on quarry, till solid granite seemed to cover the earth and reach the skies?"

—*Daniel Webster, Lecture before the Boston Mechanics' Institute, Nov. 12, '28.*

### THE JUDICIARY

"The judicial power comes home to every man. If the legislature passes incorrect or unjust general laws, its members bear the evil as well as others. But judicature acts on individuals. It touches every private right, every private interest, and almost every private feeling. What we possess is hardly fit to be called our own, unless we feel secure in its



possession; and this security, this feeling of perfect safety, cannot exist under a wicked, or even a weak and ignorant administration of the laws. There is no happiness, there is no liberty, there is no enjoyment of life, unless a man can say when he rises in the morning, I shall be subject to the decision of no unjust judge today."

—*Daniel Webster, at a Public Dinner, in N. Y. City, Mar. 10, '31.*

## AGRICULTURE

"Agriculture feeds us; to a great degree it clothes us; without it we could not have manufacturers, and we should not have commerce. These all stand together, but they stand together like pillars in a cluster, the largest in the center, and the largest is agriculture. Let us remember, too, that we live in a country of small farms and freehold tenements; a country in which men cultivate with their own hands their own fee-simple acres, drawing not only their subsistence, but also their spirit of independence and manly freedom from the ground they plough. They are at once its owners, its cultivators, and its defenders. And, whatever else may be undervalued or overlooked, let us never forget that the cultivation of the earth is the most important labor of man. Man may be civilized, in some degree, without great progress in manufactures and with little commerce with his distant neighbors. But without the cultivation of the earth, he is, in all countries, a savage. Until he gives up the chase, and fixes himself in some place and seeks a living from the earth, he is a roaming barbarian. When tillage begins, other arts follow. The farmers, therefore, are the founders of human civilization."

—*Daniel Webster, "The Agriculture of England," before legislature of Mass., Jan. 13, 1840.*

## A MOTHER'S INFLUENCE

"Bonaparte once asked Madame de Stael in what manner he could best promote the happiness of France. Her reply was full of political wisdom. She said, 'Instruct the mothers of the French people.' Mothers are, indeed, the affectionate and effective teachers of the human race. The mother begins her process of training with the infant in her arms. It is she who directs, so to speak, its first mental and spiritual pulsations. She conducts it along the impressionable years of childhood and youth, and hopes to deliver it to the stern conflicts and tumultuous scenes of life, armed by those good principles which her child has received from maternal care and love. If we draw within the circle of our contemplation the mothers of a civilized nation, what do we see? We behold so many artificers working, not on frail and perishable matter, but on the immortal mind, moulding and fashioning beings who are to exist forever. We applaud the artist whose skill and genius present the mimic man upon the canvass; we admire and celebrate the sculptor who works out the same image in enduring marble; but how insignificant are these achievements of art in comparison with the great vocation of human mothers! They work, not upon the canvass that shall perish, or the marble that shall crumble into dust, but upon mind, upon spirit, which is to last forever, and which is to bear, for good or evil, throughout its duration, the impress of a mother's plastic hand."

—*Daniel Webster, to the Ladies of Richmond, Va., Oct. 5, 1840.*

## JUSTICE

"Justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together, wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our



race. And whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself, in name and fame, and character, with that which is and must be as durable as the frame of human society."

—*Daniel Webster, Remarks upon the death of Mr. Justice Story, before Suffolk Bar, Boston, Sept. 12, 1845.*

## READING

"So much as I read, I made my own. When a half hour, or an hour, at most, had elapsed, I closed my book and thought over what I had read. If there was anything peculiarly interesting or striking in the passage, I endeavored to recall it and lay it up in my memory, and commonly could effect my object. Then, if in debate or conversation afterwards, any subject came up on which I had read something, I could talk very easily, as far as I had read, and then I was careful to stop. Thus greater credit was given me for extensive and accurate knowledge than I really possessed."

—*Daniel Webster, from letter to John W. McGraw, 1802.*

## REQUISITES OF A LAWYER

"Accuracy and diligence are much more necessary to a lawyer than great comprehension of mind, or brilliancy of talent. His business is to refine, define, to look into authorities, and compare cases and split hairs. A man can never gallop over the fields of law on Pegasus, nor fly across them on the wing of oratory. If he would stand on *terra firma* he must descend; if he would be a great lawyer, he must first consent to be only a great drudge."—*Daniel Webster, from letters to Dr. Merrill, 1803.*

## BYRON

"Byron's case shows that *fact* sometimes runs by all fancy, as a steam boat passes a scow at anchor. I have tried to find something in him to like besides his genius and his wit, but there was no other *likeable* quality about him. He was an incarnation of *demonism*. He is the only man, in English history, for a hundred years, who has boasted of infidelity, and of every practical vice, not included in what may be termed (what his biographer, Tom Moore, does term) meanness. Lord Bolingbroke, in his most extravagant, youthful sallies, and the wicked Lord Littleton were saints to him. All Moore can say is, each of his vices had some virtues or some prudence near it, which in some sort, checked it, well, if that were not so, who would escape hanging? The biographer, indeed, says his worst conduct must not be judged by the ordinary standard! And that is true, if a favorable decision is looked for. Many excellent reasons are given for his being a bad husband, the sum of which is that he was a very bad man. I confess, I was rejoiced then, I am rejoiced now, that he was driven out of England by public scorn; for his vices were not in his passions, but his principles. He decried all religion and all virtue from the housetop. Dr. Johnson says there is merit in maintaining good principles, though the preacher is seduced into violation of them. This is true. Good theory is something. But a theory of living, and of dying, too, made up of the elements of hatred to religion, contempt of morals and defiance of the opinion of all the decent part of the public, when, before, has a man of letters avowed it!"

—*Daniel Webster, in letter to Geo. T. Curtis, dated Washington, D. C., Apr. 8, '30.*



## THE BOOK OF JOB

"The Book of Job, taken as a mere work of literary genius, is one of the most wonderful productions of any age or of any language. As an epic poem it is far superior to either the Iliad or the Odyssey. The last two receive much of their attraction from the mere narrative of warlike deeds, and from the perilous escapes of the chief personage from death and slaughter; but the Book of Job is a purely intellectual narrative. Its power is shown in the dialogues of the characters introduced. The story is simple in its construction, and there is little in it to excite the imagination or arouse the sympathy. It is purely an intellectual production, and depends upon the powers of the dialogue, and not upon the interest of the story, to produce the effects. This is considering it merely as an intellectual work. I read it through very often, and always with renewed delight. In my judgment, it is the greatest epic ever written."

—*Daniel Webster, from Chas. Lenman's "Private Life of Webster," p. 102.*

## THE GLORIES OF THE MORNING

"The morning itself, few inhabitants of cities know anything about. Among all our good people, not one in a thousand sees the sun rise once in a year. They know nothing of the morning. Their idea of it is that it is that part of the day which comes along after a cup of coffee and a piece of toast. With them, morning is not a new issuing of light, a new bursting forth of the sun, a new waking-up of all that has life from a sort of temporary death, to behold the works of God, the heavens and the earth; it is only a part of the domestic day, belonging to reading newspapers, answering notes, sending the children to school, and giving orders for dinner. The first streaks of light, the earliest purpling of the east, which the lark springs up to greet and the deeper and deeper coloring into orange and red, till at length the 'glorious sun is seen, regent of the day,' this they never enjoy, for they never see it. I never thought that Adam had much the advantage of us from having seen the world while it was new. The manifestations of the power of God, like His mercies, are 'new every morning' and fresh every moment. We see as fine risings of the sun as ever Adam saw; and its risings are as much a miracle now as they were in his day, and, I think, a good deal more, because it is now a part of the miracle, that for thousands and thousands of years he has come to his appointed time, without the variation of a millionth part of a second. I know the morning, I am acquainted with it, and I love it. I love it fresh and sweet as it is, a daily new creation, breaking forth and calling all that have life and breath and being to a new adoration, new enjoyments, and new gratitude."

—*Daniel Webster, From a letter written at 5 A. M., Richmond, Va., Apr. 29, '47, to Mrs. J. W. Paige, of Boston, Mass.*

## WOULD NOT DRAG ANGELS DOWN

"Sir, I thank God that if I am gifted with little of the spirit which is said to be able to raise mortals to the skies, I have yet none, as I trust, of that other spirit, which would drag angels down. When I shall be found, sir, in my place here in the Senate, or elsewhere, to sneer at public merit, because it happened to spring up beyond the little limits of my my own state, or neighborhood; when I refuse for any such cause the homage due to American talent, to elevated patriotism, to sincere devotion to liberty and the country; or if I see an uncommon endowment of Heaven, if I see extraordinary capacity and virtue in any son of the south, and if, moved by local prejudice, or gangrened by state jealousy, I get up here to abate the tithe of a hair from his just character and just fame, may my tongue cleave to the roof of my mouth. \* \* \*



"Mr. President, I shall enter on no encomium upon Massachusetts. There is her history, the world knows it by heart. The past, at least, is secure. There is Boston, and Concord, and Lexington, and Bunker Hill; and there they will remain forever. The bones of her sons, fallen in the great struggle for independence, now lie mingled with the soil of every state from New England to Georgia; and there they will lie forever. And, sir, where American liberty raised its first voice, and where its youth was nurtured and sustained, there it still lives, in the strength of its manhood, and full of its original spirit. If discord and disunion shall wound it; if folly and madness, if uneasiness under salutary and necessary restraint, shall succeed to separate it from that Union by which alone its existence is made sure, it will stand, in the end, by the side of that cradle in which its infancy was rocked; it will stretch forth its arm with whatever vigor it may still retain, over the friends who gather around it, if fall it must, amidst the proudest monuments of its glory, and on the very spot of its origin."—*From Webster's Reply to Hayne, Jan. 26, 1830.*

### WEBSTER FORESAW DISUNION

"When my eyes shall be turned to behold, for the last time, the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on states dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance, rather, behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, nor a single star obscured, bearing for its motto no such miserable interrogatory as, *What is all this worth*; nor those other words of delusion and folly, *Liberty first and Union afterwards*; but everywhere, spread all over in characters of living light, blazing on all its ample folds as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart—*Liberty and Union, now and forever, one and inseparable!*"

—*Peroration—Webster's Reply to Hayne, in U. S. Senate, Jan. 26, 1830.*

### PUBLIC SENTIMENT

"There is something among men more capable of shaking despotic power than lightning, whirlwind or earthquake, that is the threatened indignation of the whole civilized world."

—*Daniel Webster, at "Festival of the Sons of N. H.," Boston, Nov. 7, '49.*

### WEBSTER'S GREAT LAW CASES

That the reader may see that Webster was not only a great national lawyer, but an international one as well, it will be well to give here a synopsis of some of his great cases, nine of which we will epitomize:

The Dartmouth College case (tried in 1818, in which he considered his argument one of his greatest), he contended that the charter given the college was a contract, which could not be modified subsequently without the consent of the corporation, unless power to do so were expressly conferred in the charter. The U. S. Supreme Court, in 1819 (*Dartmouth College v. Woodward*, 4 Wheat., 518), so held. Webster and Hopkinson appeared for the College, and Wirt and Holmes, and later Pinkney for Woodward, Sec. and Treas. of the new corporation.

*McCulloch v. Maryland*, 4 Wheat., 316, the same year, involved questions between the State of Maryland and the U. S. Government. The Courts decided (Marshall writing the opinion) that altho the power



to establish a national bank was not expressly granted to Congress by the Constitution, yet, as Congress had express powers to raise money to carry on the government, borrow money, and disburse its revenues, it had the implied power to employ all necessary means of effecting these objects, and the bank in question was an instrumentality which was convenient and even necessary for such purposes. The Maryland branch bank, at Baltimore, by authority of the Legislature, imposed a stamp duty on the circulating notes of all banks, or branches in the State, not chartered by the State. The Court, therefore, declared the statute unconstitutional and void. This decision has stood for nearly 100 years, as judicial authority for the federal banking system. Pinkney, Wirt and Webster appeared for McCulloch, he being the cashier of the federal branch bank; and Luther Martin, Jos. Hopkinson, and Wm. Jones for the State.

Gibbons v. Ogden, 9 Wheat., 259 and 639-47, (1824) was the Fulton Steamboat case. The legislature of N. Y. attempted to give Fulton and Livingston a monopoly on steamboat navigation on the Hudson River. Ogden, the defendant, being their assignee, brought an injunction restraining Gibbons from plying his boats upon the privileged waters. Chancellor Kent, in the State Court, sustained the contention, which was affirmed in the N. Y. Court of Appeals. Upon appeal to the U. S. Supreme Court, that Court held with Webster and Wirt, who appeared for Gibbons, that Congress having enacted statutes authorizing vessels to navigate all waters within the jurisdiction of the U. S., the State law was unconstitutional and void. Mr. Webster was suddenly called into the case, and prepared himself in a single night of intense labor. He regarded this and the Dartmouth College case his greatest cases. He had Thomas Addis Emmett and Oakley to contend with, as they were attorneys for Ogden.

Ogden v. Saunders, 12 Wheat., 213 (1827), came up upon a question arising in the Circuit Court of Louisiana, upon an action in assumpsit, brought by Saunders of Kentucky, against Ogden of Louisiana, and involved the question whether a contract made after the passage of a State law, undertaking to discharge on a surrender of their property for distribution among their creditors, is not equally within the prohibition of the Federal Constitution, whether the clause prohibiting State laws impairing the obligation of contracts covered future, as well as past, contracts. The Court decided, contrary to Webster's position, that an insolvent law of a State does not impair the obligation of a *future* contract between its own citizens. Marshall, Story and Duvall, however, dissented. Clay, Ogden and Haines appeared for Ogden in U. S. Circuit, and D. B. Ogden, Wm. Jones and Mr. Sampson for Ogden in Supreme Court, and Webster and Wheaton for Saunders, and established the long accepted doctrine that only Congress can pass a Bankrupt Act.

U. S. Bank v. Primrose, 13 Peters, 579 (1839), came up on appeal from the Circuit Court of Alabama, where the judgment was for defendant.

The Supreme Court held that the law of Comity prevails between the States as between independent nations, and entitles the corporations of one sovereignty to make contracts in another, and sue in the courts. Sergeant and Webster for plaintiffs in error. The higher court reversed the decision of the lower court.

The Girard Will Case (Videl et al. v. Girard's Executors) 2 Howard, 127 (1844), came up on appeal from the decree in equity rendered in the Circuit Court of Pennsylvania, to try the question of the validity of Girard's will. The question was whether the bequest to found a college could be construed to be a charitable devise. Girard was a free thinker, and provided in his will that no priest or minister of any denomination should be admitted to his college. Webster, assuming that this excluded all religious teaching, laid down the proposition that no bequest or gift could be charitable which excluded Christian charity. Webster and Wm. Jones represented the complainants and appellants, the heirs; Horace Binney and Sergeant for the respondents, or executors, for the validity



of the will. (Mr. Binney, by the way, is said to have studied the question of "Charitable Uses," a year in Europe in preparation to try this case.) The Court, by Judge Story, against Webster, held:

1. That the will was not void for uncertainty.

2. That it was not void as a charity, because the testator did not intend to exclude the teaching of Christianity, though he excluded its being taught by its ministers, or other sectarian persons.

3. That whether void as a charity, where testator prohibited all teaching of the Christian religion by *anybody*, the Court expressed no opinion.

Luther v. Borden, 7 Howard, 1 (1848) frequently called "The Rhode Island Case," grew out of the troubles, known as "Dorr's Rebellion," and involved the constitutional provisions for suppressing insurrections and securing to every State a republican form of government, and also the general history and theory of the American governments, State and National. The declaration was in trespass. The writ issued in 1842, in which Luther Martin complains that Luther M. Borden and others broke into his house, in Warren, R. I., June 29, 1842, and disturbed his family and committed other illegal acts. The plea is jurisdiction under the law of R. I. The cases came up on a writ of error from the Circuit Court (in which Mr. Justice Story had presided and found for the defendants): the second case came up by a certificate of division of opinion. The allegations, evidence and arguments were the same in each. Mr. Hallett and Mr. Nathan Clifford (Attorney-General of the U. S.) for plaintiff in error. Webster and Whipple defendants in error. The U. S. Supreme Court held that it was bound by the President's decision as to which of the rival organizations was the lawful State government of R. I., and declined to take jurisdiction of what was purely a political question, lying beyond the jurisdictional authority. Mr. Webster pointedly said, "How can a Court invite the present Governor and the rebel, Thos. W. Dorr, to exchange places?"

The White Murder Case, tried in the State court, at Salem, Massachusetts, in July and August, 1830, involved the trial for murder of Francis and Jos. J. Knapp and George and Richard Crowninshield for the murder of Capt. Jos. White, an old man of 82 years, at Salem. Webster appeared in aid of the prosecution; Franklin Dexter and W. H. Gardiner for the defense. It was an extraordinary case, Francis Knapp was convicted, as principal, and sentenced to death. Jos. J. Knapp, tried three months later, charged with being an accessory before the fact, was convicted and sentenced to be hanged; Geo. Crowninshield proved an *alibi*, and was acquitted; his brother, Richard Crowninshield, committed suicide by hanging himself to the bars of his cell with a handkerchief.

This is the case in which Webster's argument finds place in the old readers, "Murder will out," in which he so vividly pictures the tortures of a guilty conscience.

(Of the introduction, H. C. Lodge, says: "I have studied this famous exordium with extreme care, and I have sought diligently, in the works of all the great modern orators, and some of the ancient as well, for similar passages of higher merit. My quest has been in vain").

The Goodyear Rubber Case, tried in 1852, the last year of Mr. Webster's life, when he was 70, was an injunction and accounting sought by Chas. Goodyear, the patentee and inventor of vulcanized India rubber, against Horace H. Day. It was tried in a court of equity, at Trenton, N. J., involved a multitude of facts and the intricacies of patent law. Webster, Jas. T. Brady and Edward L. Dickinson for Goodyear, had as opponents, Rufus Choate and Francis B. Cutting. Mr. Justice Grier of the U. S. Supreme Court, and Hon. Philemon Dickerson of the U. S. District Court for N. J. heard the case. The rights of Goodyear were established, and the case remains one of the most remarkable of Webster's forensic efforts. He received a retainer of \$15,000 in the case.



Says Choate, "Who, anywhere, has won, as Webster had, the double fame, and won the double wreath of Murray and Chatham, of Dunning, and Fox, of Erskine and Pitt, of William Pinkney and Rufus King, in one blended and transcendent superiority?"

"I am quite sure that there is not, in the general judgment of the profession, nor in the conforming opinion of his countrymen, any lawyer that, in the magnitude of his causes, in the greatness of their public character, in the immensity of their influence upon the fortunes of the country, or the authority which his manner of forensic eloquence in courts and over courts, can be placed in the same rank with Webster."

—*Wm. Evarts, at the unveiling of Webster's statue, at Central Park, N. Y., Nov. 25, 1876.*

Jeremiah Smith, of New Hampshire, who was associated with him for years as lawyer and judge, gave it as his opinion:

"That in the union of high intellectual qualities, I have known no man whom I think his equal."

Hugh McCulloch, who was familiar with Webster's methods in the courts wrote:

"No man of his years ever excelled Mr. Webster as a lawyer until he entered public life."

Sir Charles Russell, afterwards Lord Killowen, said:

"Daniel Webster's arguments were granite-like, and he was, perhaps, the greatest figure the world has seen."—*Article, 'The Bar as a Profession.'*

## TOLERATION

"The principle of toleration, to which the world has come so slowly, is at once the most just and the most wise of all principles. Even when religious feeling takes a character of extravagance and enthusiasm and seems to threaten the order of society and shake the columns of the social edifice, its principal danger is in its restraint. If it be allowed indulgence and expansion like the elemental fires, it only agitates, and perhaps purifies, the atmosphere; while its efforts to throw off restraint would burst the world asunder."

—*Daniel Webster, from 'First Settlement of New England,' Dec. 22, 1920.*

## AFFECTIONATE SEPULTURE

"We naturally look with strong emotions to the spot, though it be a wilderness, where the ashes of those we have loved repose.

"When the heart has laid down what it loved most, there it is desirous of laying itself down. No sculptured marble, no enduring monuments, no honorable inscription, no ever-burning taper that would drive away the darkness of the tomb, can soften our feelings of the reality of death, and hallow to our feelings the ground which is to cover us like the consciousness that we shall sleep, dust to dust, with the objects of our affections."—*Webster's 'First Settlement of New England.'*

## GOVERNMENT RESTS UPON THE HOLDING AND DISTRIBUTING OF PROPERTY

"In the absence of military power, the nature of government must essentially depend on the manner in which property is holden and distributed. There is a natural influence belonging to property, whether it exists in many hands or few, and it is on the rights of property that



both despotism and unrestrained popular violence ordinarily commence their attacks. \* \* \* A republican form of government rests more on political constitutions, than on those laws which regulate the descent and transmission of property. Governments like ours could not have been maintained, where property was holden according to the principles of the feudal system; nor, on the other hand, could the feudal constitution possibly exist with us."—*Webster on the 'First Settlement of New England.'*

### THE MAYFLOWER

"The Mayflower sought our shores under no high-wrought spirit of commercial adventure, no love of gold, no mixture of purpose, warlike or hostile to any human being. Like the dove from the ark, she had put forth only to find rest. Solemn supplications on the shore of the sea, in Holland, had invoked for her, at her departure, the blessing of Providence. The stars which guarded her were the unobscured constellations of civil and religious liberty. Her deck was the altar of the living God. Fervent prayers on bended knees, mingled, morning and evening, with the voices of ocean, and the sighing of the winds in her shrouds. Every prosperous breeze, which, gently swelling her sails, helped the Pilgrims onward in their course, awoke new anthems of praise; and when the elements were wrought into fury, neither the tempest, tossing their fragile bark like a feather, nor the darkness and howling of the midnight storm, ever disturbed, in man or woman, the firm and settled purpose of their souls, to undergo all, and to do all, that the meekest patience, the boldest resolution, and the highest trust in God could enable human beings to suffer or to perform."

—*Webster's Speech on 'The Completion of the Bunker Hill Monument,' June 17, 1843.*

### THE BIBLE

"The Bible is a book of faith, and a book of doctrine, and a book of morals, and a book of religion, of especial revelation from God; but it is also a book which teaches man his own individual responsibilities, his own dignity, and his equality with his fellowman."

—*Webster—Speech on 'Completion of Bunker Hill Monument,' June, 1834.*

### WASHINGTON

"America has furnished to the world the character of Washington! And if our American institutions had done nothing else, that alone would have entitled them to the respect of mankind. \* \* \* I would cheerfully put the question today to the intelligence of Europe and the world, what character of the century, upon the whole, stands out in the relief of history, most pure, most respectable, most sublime; and I doubt not, that, by a suffrage approaching to unanimity, the answer would be Washington."

—*Webster's Speech, 'Completion of Bunker Hill Monument,' 1843.*

### HUMBLE BIRTH

"It did not happen to me to be born in a log cabin; but my elder brothers and sisters were born in a log cabin, raised amid the snow-drifts of New Hampshire, at a period so early that, when the smoke first rose from its rude chimney, and curled over the frozen hills, there was no similar evidence of a white man's habitation between it and the settlements of the rivers of Canada."

—*Webster's speech at Saratoga, N. Y., Aug. 19, 1840, in Wm. Henry Harrison Campaign.*



## LIBERTY

"Liberty is the creature of law, essentially different from that authorized licentiousness that trespasses on right. It is a legal and refined idea, the offspring of high civilization, which the savage never understood and never can understand. Liberty exists in proportion to wholesome restraint; the more restraint on others to keep off from us, the more liberty we have. It is an error to suppose that liberty consists in a paucity of laws. If one wants few laws, let him go to Turkey. The Turk enjoys that blessing. The man is free who is protected from injury."

—*Webster on 'The Judiciary,' at a dinner of the Charleston, S. C., Bar, May 12, 1847.*

## INFLUENCES OF COLLEGES

"Sir, you may destroy this little institution (Dartmouth College); it is weak; it is in your hands. I know it is one of the lesser lights in the literary horizon of our country. You may put it out, but if you do, you must carry through your work. You must extinguish, one after another, all those great lights of science which for more than a century have thrown their radiance over our land. It is, sir, as I have said, a small college, and yet there are those who love it." ("Here," says Prof. Goodrich, "the feeling he had this far succeeded in keeping down, broke forth. His lips quivered; his firm cheeks trembled with emotion; his eyes filled with tears; his voice choked and he seemed struggling to the utmost to gain that mastery over himself which might save him from an unmanly burst of feeling. \* \* \* The whole seemed mingled throughout with the recollection of father, mother, brother, and all the privations and trials through which he had made his way into life. Everyone saw that it was wholly unpremeditated, a pressure on his heart, which sought relief in words and tears.") \* \* \* "Sir, I know not how others may feel," Webster proceeded, glancing at the opponents of the college before him, "but for myself, when I see my Alma Mater surrounded like Caesar in the Senate-house by those who are reiterating stab after stab, I would not for this right hand have her turn to me, and say, '*Et tu quoque, mi fili.*' (And thou, too, my son?)"

—*Webster's close in the Dartmouth College case, before U. S. Supreme Court, Washington, D. C., 1818.*

## RELIGION

"Nothing of character is really permanent but virtue and personal worth. These remain. Whatever of excellence is wrought into the soul itself belongs to both worlds. Real goodness does not attach itself merely to this life; it points to another world. Political or professional reputation cannot last forever but a conscience void of offense before God and man is an inheritance of eternity. Religion, therefore, is a necessity and an indispensable element in any great human character. There is no living without it. Religion is the tie that connects man with his Creator, and holds him to his throne. If that tie be all sundered, all broken, he floats away, a worthless atom in the universe; its proper attractions all gone, its destiny thwarted, and its whole future nothing but darkness, desolation and death. A man with no sense of religious duty is he whom the Scriptures describe, in such terse but terrific language, as living 'without God in the World.' Such a man is out of his proper being, out of the circle of all his happiness, and away, far, far away, from the purposes of his creation."

—*Webster's remarks on the death of Jeremiah Mason, before Supreme Court of Mass., at Boston, Nov. 14, 1848.*



## LEGAL VALUE OF MONEY

"In truth, nothing is so baneful, so utterly ruinous to all true industry, as interference with the legal value of money; or attempting to raise artificial standards to supply its place. Such remedies suit well the spirit of extravagant speculation, but they sap the very foundation of all honest acquisition. By weakening the security of property, they take away all motive for exertion. Their effect is to transfer property. Whenever a debt is allowed to be paid by anything less valuable than the legal currency in respect to which it was contracted, the difference between the value of the paper given in payment and the legal currency is precisely so much property taken from one man and given to another, by legislative enactment."—*Webster, in Tariff Speech, in H. of R., Washington, Apr. 2, 1824.*

## WHY SPAIN DEGENERATED

"Unenlightened and bigoted legislation, the multitude of holidays, miserable roads, monopolies on the part of government, restrictive laws, that ought long since to have been abrogated, are generally, and I believe truly, reckoned the principal causes of the bad state of the productive industry of Spain."

—*Webster in H. of R., Washington, D. C., Tariff speech, Apr. 2, 1824.*

## MARTIN VAN BUREN'S FOX-LIKE TREAD

"The Buffalo Platform was constructed of such slight materials that, while it would not bear a very heavy tread, it would sustain the fox-like footsteps of Mr. Van Buren." As Mr. Webster said this, he thrummed his fingers down his coat-sleeve.—*Speech in Faneuil Hall, Oct. 24, 1848.*

## CHARITY LENDING A MANTLE

"If this bill passes," at this point Webster brought his fist down against his desk, and as the blood trickled down his fingers, he wound his handkerchief around them, adding, "charity will have to lend a mantle to wrap the pale corpse of a nation's credit."

## EDUCATION—SCHOLARS, HOW MADE

"Costly apparatus and splendid cabinets have no magical power to make scholars. In all circumstances, as a man is, under God, the master of his own fortune, so is he the maker of his own mind. The Creator has so constituted the human intellect that it can grow by its own action only; and by its own action it will certainly and necessarily grow. Every man must, therefore, educate himself. His book and teacher are but *helps*; the *work* is his. A man is not *educated* until he has the ability to summon, in any emergency, all his mental powers to vigorous exercise and control them in that exercise to effect his purposed object. It is not the man who has seen most, or read most, or heard most, who can do this; such a man is in danger of being borne down, like a beast of burden, by an overwhelming mass of other men's thoughts. Nor is it the man who can boast of native vigor and capacity; the greatest of all warriors in the siege of Troy had not the pre-eminence because nature had given him strength and he carried the largest bow, but because *self-discipline* had taught him how to bend it."

—*Webster to a graduating class, at Harvard, probably in 1845.*

The above was found among his papers in his own hand-writing.

—*Author.*

## "MURDER WILL OUT"

"The deed was executed with a degree of self-possession and steadiness equal to the wickedness with which it was planned. The circumstances



now clearly in evidence spread out the whole scene before us. Deep sleep had fallen on the distinguished victim, and on all beneath his roof. A heathful old man to whom sleep was sweet, the first sound slumbers of the night held him in their soft but strong embrace. The assassin enters, through the window already prepared, into an unoccupied apartment. With noiseless foot he paces the lonely hall, half lighted by the moon; he winds up the ascent of the stairs, and reached the door of the chamber. Of this, he moves the lock, by soft and continued pressure, till it turns on its hinges without noise; and he enters, and beholds his victim before him. The room is uncommonly open to the admission of light. The face of the innocent sleeper is turned from the murderer, and the beams of the moon, resting on the gray locks of his aged temple, show him where to strike. The fatal blow is given, and the victim passes without a struggle or a motion, from the repose of sleep to the repose of death! It is the assassin's purpose to make sure work; and he plies the dagger, though it is obvious that life has been destroyed by the blow of the bludgeon. He even raises the aged arm, that he may not fail in his aim at the heart, and replaces it again over the wounds of the poniard! To finish the picture, he explores the wrist for the pulse! He feels for it, and ascertains that it beats no longer! It is accomplished. The deed is done. He retraces his steps to the window, passes out through it as he came in, and escapes. He has done the murder. No eye has seen him, no ear has heard him. The secret is his own, and it is safe!

"Ah, gentlemen, that was a dreadful mistake. Such a secret can be safe nowhere. The whole creation of God has neither nook nor corner where the guilty can bestow it and say it is safe. Not to speak of that eye which pierces through all disguises, and beholds everything as in the splendor of noon, such secrets of guilt are never safe from detection, even by men. True it is, generally speaking, that 'murder will out.' True it is that Providence hath so ordained, and doth so govern things, that those who break the great law of Heaven by shedding man's blood seldom succeed in avoiding discovery. Especially in a case exciting so much attention as this, discovery must come, and will come, sooner or later. A thousand eyes turn at once to explore every man, everything, every circumstance, connected with the time and place; a thousand ears catch every whisper; a thousand excited minds intensely dwell on the scene, shedding all the light and ready to kindle the slightest circumstance into a blaze of discovery. Meantime the guilty soul cannot keep its own secret. It is false to itself; or rather it feels an irresistible impulse of conscience to be true to itself, it labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed on by a torment which it dares not acknowledge to God or man. A vulture is devouring it, and it can ask no sympathy or assistance, either from heaven or earth. The secret which the murderer possesses soon comes to possess him; and, like the evil spirits of which we read, it overcomes him, and leads him whithersoever it will. He feels the beating of his heart, rising in his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, and conquers his prudence. When suspicions from without begin to embarrass him, and the net of circumstance to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed, it will be confessed, there is no refuge from confession but suicide, and suicide is confession."

—*From Webster's argument for the prosecution of John Francis Knapp for the murder of Jos. White, of Salem, Mass., on the night of Apr. 6, 1830. The verdict was "Guilty."*



Says "Savoyard:" "John Marshall, our greatest judge, thought Pinkney our greatest lawyer. Webster thought Mason was more than Pinkney's equal, and there were good judges who thought Webster the superior of either of them."

LAWYERS: "Most lawyers work hard, live well and die poor."  
—*A Saying of Webster's.*

DANIEL WEBSTER: "Each of his words weighed a pound."  
—*Was said of his style.*

FLUENCY OF SPEECH: "Fluency in speech is like the departure of church-goers, the fewer in the house the faster they come out," was one of Webster's sayings.

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## VALIDITY OF GIFTS FOR ADVANCEMENT OF LEARNING

"A gift for the advancement of useful learning is the most meritorious charity that can be given. Most charities terminate with individuals, who are the objects of them. But donations of this kind are benefactions to the whole community. They furnish the means of bringing great and natural abilities out into public service and thereby become a charity not only to the persons who are so helped forward in their education, but to the whole society, which reaps the benefit of those parts and abilities in the several stations of life, where Providence places and employs them; and as Coke, in arguing Porter's case says: 'No time was ever so barbarous as to take away erudition and science.' All people have at all times thought it most meritorious to promote and encourage them. Even Omar, who directed the Alexandrian library to be burnt, did not wage war against useful learning, but thought if the learning contained in those books did not agree with the Alcoran, it was noxious; and if it did, it was useless. It has been observed that it is an ostentatious attempt to perpetuate the testator's name. Wishes of this kind often influence the wisest and best of men. There is nothing immoral in yielding to such a motive, if it was the sole and only motive of such a disposition. It is a passion implanted in the mind as a laudable incentive to industry, and the reward promised Abraham for his faith: 'I will make thy name great among the nations.'

"The Barnardistons and Peters are to change their names; but that circumstance will not affect the validity of the devise; and why should that circumstance be more disgusting in one case than the other? To raise and establish a family in the testator's name, by the medium of a college for the good of mankind, was his next object. Social affection was the object of that provision.

"Admit that vanity had some share in both the dispositions; it loses all its malignant qualities when it is productive of good. And in Popham, 139, ascribing charitable gifts to vain glory and ostentation, is said to tend to a public wrong, because it deters and discourages them; and perhaps the world owes some of the greatest and noblest benefactions to this motive, acting in a thousand shapes and forms. It is a spring not to be checked and stopped up; because under the direction of good laws, it becomes an inexhaustible source of benefits to mankind. And courts of justice are not to examine, like casuists, the motives of such dispositions, but to execute or condemn them, according to their own intrinsic merit or demerit, let them proceed from what motives they will."

—*Lord Chief Justice Wilmot (England), Atty. General v. Lady Downing, Wilmot's opinions, 25-6.*



## SIR RICHARD WEBSTER, LORD ALVERSTONE (1842-1915), England

### DUAL SYSTEM—BARRISTERS AND SOLICITORS IN ENGLAND

"I asked Mr. Benjamin his opinion on the question of whether the two systems should be fused, that the barrister to try the case in court, and that of the solicitor to prepare the brief, he having experienced both systems. He said he agreed that for a country with a long-established procedure, the English system was by far the best; but he thought that for a new and young country which had not reached the stage of final development, it would be difficult to maintain the separation which exists in this country, and that it was necessary that lawyers should be allowed to conduct cases in court as well as to act as solicitors. I can only say that in my opinion the existence of a body of men who devote themselves solely to advocacy, and have little or nothing to do with the cases until they are brought to them for conduct in court, has been of immense value to our English system of jurisprudence. The independence of the Bar arising from the absence of any personal interest in the success of proceedings has given them a position in public opinion which could not possibly be attained under any other system. Dealing with the question on its merits, in heavy litigation a properly instructed barrister with all the facts before him is, in my judgment, the best qualified person to present a case in a way which will attract the attention of, and be easily followed by, a tribunal which, for the first time, is called upon to listen to the merits of the case, whether of law or fact. The solicitor who has been engaged in preparing the brief, and has perhaps brooded over it for several months, is apt to attach undue importance to particular incidents without sufficiently considering their bearing as a whole, or their weight in connection with other incidents and arguments in the case. I frequently discussed the question with Sir Charles Russell, and he entirely concurred in my opinion; he held that a barrister coming new to the consideration of the facts is able to take a more detached view, putting the material incidents in their proper order, and not attaching undue importance to special facts."

—*He succeeded Lord Russell as lord chief justice of England in 1900, at a salary of \$40,000, writes Webster in his "Recollections of Bench and Bar," p. 227.*

"By the time I gave up practice in 1895 I received 3,330 retainers, of which 535 were general retainers, and 2,795 retainers in particular cases."

### EXAMINATION-IN-CHIEF

"For many years I have been struck by the fact that the importance of proper examination-in-chief of witnesses is not sufficiently studied by many members of the Bar, some of whom have attained considerable eminence as advocates. The fact is, that juries are told, and good juries know that they have to decide the case before them upon the evidence, and nothing is of greater moment than for the important witnesses on the one side or the other to give their evidence as a connected story, not suggested by leading questions, but at the same time kept in hand by the counsel who is examining them. I have not infrequently seen both while at the Bar and on the Bench, the effect of evidence practically destroyed by the slovenly, haphazard way in which witnesses were examined. I had the great advantage of having to practice for many years before Chief Justice Cockburn, who was, of all Judges, the man who paid most attention to the way in which witnesses were examined, and if the story was given with the facts not in their proper order in point of date, he would break out with strong remonstrances to counsel. I



well remember a junior experience answering, when Cockburn complained of the way in which the witness was being examined and of the broken character of his story, 'I was only taking it from my proof, my Lord.' 'Proof!' said Cockburn, 'you ought to be able to examine your witnesses without looking at your proof.' Which was a perfectly just observation. Cross-examination is far easier than examination-in-chief. In cross-examination, one cannot avoid getting answers which are not desirable, as one has to put leading questions and points of contradiction to hostile witnesses; but in chief a great deal depends upon the way in which witnesses are examined. I made a great study of this for many years, and have been gratified by the compliments I received from my leaders, and occasionally from the Bench."

—"*Recollections of Bench and Bar*," pp. 283-5.

### THE PROFESSION OF LAW

"The Bar is a great profession for men of ability and industry. I have often said that, given that a man who knows his work, has the courage and perseverance to go through the period of waiting, he will ultimately succeed. Of course, there are degrees of success, and luck or good fortune has a great deal to do with the amount of it. But all said and done, if a man is competent, and has the courage to stick to his work, I do not believe in absolute failure. Sir John Karslake, when asked what were the three things necessary for success at the Bar, said the first was tact, the second tact, the third tact. He was not far wrong. I have seen many errors made, cases lost, and clients affronted by a want of ordinary tact on the part of the barrister. Of course, it will be remembered that when Sir Edward Clarke was asked what were the three essentials, he replied: 'To be very poor, very ambitious, and very much in love.' No doubt these qualifications also may have much to do with a man's success. I knew one barrister who for eight years never got any work at all. He was of untiring energy and very able. He stuck to his work manfully, and in the end, acquired a very large practice."

—"*Recollections of Bench and Bar*."

### SHORT SKETCH OF WEBSTER

"Viscount Alverstone (Sir Richard Webster), for nearly thirty years Lord Chief Justice of England, was one of the most popular, human and many-sided men in British public life. Tall, athletically modeled and vigorous, he was a splendid specimen of the old school of English gentlemen. In sports he won many trophies on the cinder track. He was an enthusiastic rider and a good hand at golf, and a frequent visitor to the National Sporting Club. He came into prominence before the American public as the representative of England on the Alaskan boundary commission. His voice in support of the chief claims of the U. S. gave America the practical victory. Many Canadians professed to believe, and with bitterness asserted, that the American government went into the arbitration only after it had reached an understanding that the American case should win, and that Alverstone was put forward to carry out the diplomatic bargain. Previous to the Alaskan commission, Lord Alverstone, then Richard E. Webster, rendered good service to his government as one of the British counsel before the Venezuelan boundary commission, which met in Paris as a result of President Cleveland's famous war message. Lord Alverstone was considered one of the leading lawyers of his time, and had a keen sympathy, acute knowledge of men and great insight into affairs, and a wide knowledge of his profession, all obtained by hard work. He was born in 1842. His father was Thomas Webster, Q. C., well known at Westminster, where he had a large practice, especially in patent cases. As Lord Chief Justice of England, he received a salary of \$40,000 a year.—*The Author*.



ALEXANDER WEDDERBURN, LORD LOUGHBOROUGH  
(1733-1805), England

AGAINST THE COLONIES

"It will be found necessary to disregard their charters (those of the Colonies) if you mean to restore subordination among them; but I hope and firmly wish that even the idea of your authority being known to them will at once prevent the exertion of it, I agree with the honorable gentleman (Colonel Barre) that conciliation is desirable; but while you hold out the olive branch in one hand, you must grasp your sword in the other. Peace will be established on proper principles when there is power to enforce it; and your authority once established, I would then drop the point of the sword, and stretch out the olive branch to the vanquished."—*Speech in Parliament.*

When Loughborough died in 1805 of gout in the stomach, Geo. III was graciously pleased to exclaim, "Then he has not left a greater knave behind in my dominions." It is related that when Thurlow was told this remark of the King, he vented his spleen against both parties by observing, with an oath, "I perceive that his Majesty is quite sane at present." (Geo. III was supposed to be insane.)

—6 *Lives of the Chancellors*, 334-n.

Said Thurlow: "If I was as tired as a toad in a well, I could kick that fellow Loughborough heels over head any day in the week. He has the gift of gab in a marvellous degree, but he is no lawyer. In the House of Lords I get Kenyon or somebody to start some law doctrine in such a manner that the fellow must get up to answer it, and then I leave the woolsack, and give him such a thump in his bread-basket that he cannot recover himself."—1 *Twiss' Life of Eldon*, 122.

Ellenborough, when censured by the ladies for remaining away from them to talk law, he replied, "Madam, I beg your pardon: we have not been talking law; we have been talking of one of the decisions of Lord Loughborough."—6 *Lives Chancellors*, 250-1.

"Wedderburn died childless, the twice wedded, unbeloved, busy only in getting everything he could as the wages of corruption. When he died no Senate spoke his praise; no poet embalmed his memory, no man mourned, and the King hearing that he was certainly gone, said only: "He has not left a greater knave behind him in my kingdom."

—Geo. Bancroft in 3 *U. S. History*, 464.

THE PRESS

"I am far from adopting the creed of my honorable and learned friend the Attorney-General, 'that if we were less learned we should be better men.' I hold, on the contrary, that the diffusion of learning, by the liberty of the press, is necessary to public liberty and public morality. Like all the great and powerful nations that ever existed, we are tending towards effeminacy. What then would become of us without the press? Not to speak of the rational and elegant amusements which it affords, we owe to it all the spirit which remains in the nation. Were an *imprimatur* clapped upon it, and a licenser appointed, we should soon come to the last stage of barbarism. We should be worse than Turks and infidels, the setting of the sun of science being much more gloomy and dismal than



the dark hour which precedes its rise. Let us then guard the liberty of the press as watchfully as the dragon did the Hesperian fruit. Next to the privileges of this house and the rights of juries, it is the main prop of the Constitution. Nay, without it I fear the other two would prove very ineffectual. Tho it be sometimes attended with inconveniences, would you abolish it? According to this reasoning, what would become of the greatest blessings of society? None of them come pure and unmixed."—*Speech in the House of Commons.*

Says Irving Browne: "Wedderburn was a most accomplished political debater and orator; Campbell thinks the greatest for a lawyer, that ever sat in the House of Commons. 'More sarcastic than Murray, more forcible than Pratt, more polished than Dunning, more conciliatory than Thurlow, he combined in himself the great physical and intellectual requisites for swaying a gentleman-like mob.'"

—From 'Short Studies of Great Lawyers,' p. 66.

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## IMMORTALITY

"When an intellectual being finds himself on this earth, as soon as the faculties of reason operate, one of the first inquiries of his mind is: 'Shall I be here always?' 'Shall I live here forever?' And reasoning from what he sees daily occurring to others, he learns to a certainty that his state of being must one day be changed. I do not mean to deny that it may be true that he is created with his consciousness; but whether it be consciousness, or the result of his reasoning faculties, man soon learns that he must die. And of all sentient beings, he alone, so far as we can judge, attains to this knowledge. His maker has made him capable of learning this. Before he knows his origin and destiny, he knows that he is to die. Then comes that most urgent and solemn demand for light that ever proceeded or can proceed, from the profound and anxious broodings of the human soul. It is stated with wonderful force and beauty in that incomparable composition, the book of Job: 'For there is hope of a tree, if it be cut down, that it will sprout again, and that the tender branch thereof will not cease; that, through the scent of water it will bud and bring forth boughs like a plant. *'But if a man die, shall he live again?'* And that question nothing but God and the religion of God, can solve. Religion does solve it and teaches every man that he is to live again and that the duties of this life have reference to the life which is to come. And hence, since the introduction of Christianity, it has been the duty, as it has been the effort of the great and the good, to sanctify human knowledge, to bring it to the front and to baptize learning into Christianity; to gather up all its productions, its earliest and its latest, its blossoms and its fruits, and lay them all upon the altar of religion and virtue."

—Daniel Webster from his three-day argument in the Girard Will Case, in U. S. Supreme Court.



## FRANCIS WHARTON (1820-1889), Pennsylvania

### KNOWLEDGE

“Perfect knowledge alone can give certainty, and in nature perfect knowledge would be infinite knowledge, which is clearly beyond our capacities. We have, therefore, to content ourselves with partial knowledge, and knowledge mingled with ignorance producing doubt.”

—1 *Wharton on Evidence*, p. 10.

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### JUDGE GRIER OF THE U. S. CIRCUIT COURT, ON GOODYEAR'S RIGHTS AS TO HIS PATENTS IN INDIA RUBBER

“It is due to Mr. Goodyear to say, that upon examining the certificate of Professor Silliman, and other evidence in the case, I am entirely satisfied that he is the original inventor of the process of vulcanizing rubber, and that he is not only entitled to the relief which he asks, but to all the merits and benefits of that discovery. Many persons had made experiments—they had used sulphur, lead, and heat, before Goodyear's patents, and, probably, before his discovery. But to what purpose? Their experiments ended in discovering nothing, except, perhaps, that they had ruined themselves. The great difference between them and Goodyear is, that he persisted in his experiments, and finally succeeded in perfecting a valuable discovery, and they failed. \* \* \* It is when speculation has been reduced to practice, when experiment has resulted in discovery, and when that discovery has been perfected by patent and continued experiments—when some new compound, art, manufacture, or machine, has been thus produced, which is useful to the public, that the party making it becomes a public benefactor, and entitled to a patent.”

James Parton, one of his biographer's adds: “Those who would censure Mr. Goodyear for permitting his estate to become so much involved should consider that his discovery was not profitable to himself for more than ten years, that he was deeply in debt when he began his experiments, that his investigations could be carried on only by increasing his indebtedness, that all his bargains were those of a man in need, that the guilelessness of his nature made him the easy prey of greedy, dishonorable men, and that his neglect of his private interests was due to his zeal for the public good.”

The committee acted favorably on his application for renewal enabling him to enter afresh upon the study of his life. Mr. Goodyear was born in New Haven, Conn., Dec. 29, 1800, and died July 1, 1860.

—*The Author*.

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### THEOPHILUS PARSONS, JR., ON LEMUEL SHAW

“Judge Shaw carried to the bench ability, industry, learning, sagacity and integrity; and upon him rested the hopes these would inspire. These high qualities were enfeebled by those counteracting weaknesses others have overcome, but few have found no need of overcoming. Vanity—the love of distinction, applause and popularity, is called a universal passion; but it had no place in him. We seldom find those in high places, who do not need to remember the forgetting of self; but this thought never came to him; and there was never any reason for its coming.”

—*Frederick H. Chase's 'Life of Shaw'*.



## EDWARD DOUGLASS WHITE (1845- ), Louisiana

### PEN-PICTURE OF CHIEF JUSTICE EDWARD DOUGLAS WHITE

"Within the Court it was the Judge's custom, as a case was argued, to lean back his head upon his chair, with eyes closed, apparently asleep. It was disconcerting for lawyers to continue to a chief justice whom, it would seem, their argument was not sufficiently lucid to interest, but even to keep awake. But suddenly the Chief Justice would lean forward, open his eyes, and ask a question summing up the entire case as it had progressed to that moment, showing his complete grasp of every thread of the argument. The curious explanation of this habit was vouchsafed by the Chief Justice to a jurist of a lower court, who one day, out of chambers, asked point-blank the reason. Chief Justice White explained that some years ago he contracted the habit, which he could not shake off, of watching the swift contortions and changes of the mouths of lawyers when addressing the court. His gaze would become fixed upon the human mouth before him, and he found it impossible to avoid letting his mind wander from the course of the argument. Therefore, to do justice to the causes presented before him, he adopted the plan of leaning back and listening with closed eyes. He prided himself upon his memory, which was unusually keen. He seldom referred to the text of an opinion he had written, when he delivered it in court. He would dictate it to a stenographer, and then not look at it again. When he took his seat to deliver the opinion, he would recite it from memory, with every citation, every word, exactly as written.

"One of the exceedingly long opinions which he so delivered was the Minnesota rate case, determining the power of the interstate commerce commission to set rates for interstate business which had relation to interstate business."

Edward Douglass White was born in 1845 in the parish of Lafouche, Louisiana, and was educated at Mount St. Mary's College, Maryland, the Jesuit College, New Orleans, and Georgetown College, D. C. During part of the Civil war he served in the Confederate army, and was admitted to the Louisiana bar in 1868. In 1874-78 he served as a state senator, was associate justice of the Louisiana Supreme Court (1878-91), United States senator (1891-94), and in 1894 was appointed associate justice of the Supreme Court of the United States; and in 1910 was appointed Chief Justice of that Court by President Taft. He died in office, May 19, 1921.—*Author.*

### LAST WILL AND TESTAMENT WRITTEN BY HIM

"This is my last will. I give, bequeath and devise to my wife, Letitia M. White, in complete and perfect ownership, all my rights and property of every kind and nature, whether real, personal or mixed, wherever situated, appointing her executrix of my estate without bond and giving her seisin thereof."



## CHIEF JUSTICE J. E. WILMOT (1709-1792), England

### THE COMMON LAW

“In truth, the common law is nothing else but statutes worn out.”

Was judge of the court of king's bench, from 1755 to 1770, when upon the resignation of Lord Camden, he was offered the great seal which was tendered him by the Duke of Grafton, which he refused; and during the same year, again declined the Chief Justiceship, at the hands of Lord North. His knowledge was extensive and profound, and was by no means confined to his profession. He was a great general scholar.

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### DANIEL WEBSTER'S PENETRATING LOOK

“His eyes, though deep-set, were so penetrating that few guilty men could endure their piercing gaze. One of his clients in a case of considerable importance informed him that he thought a witness on the other side intended to commit perjury. ‘Point him out when he comes into the court-room,’ said Webster. The witness soon appeared and took a seat in a swaggering manner, when looking toward the bar his eyes met those of Webster fixed steadily upon him. He immediately looked in another direction, but, as if fascinated, he soon turned his face again toward Webster, to meet those deep, penetrating eyes, which seemed to read his very soul. He moved nervously for a few moments, then rose and left the court-house, to which he could not be induced to return.”

—*McCulloch's 'Men and Measures of Half a Century'*, 19.

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### FRANCIS BACON

“The quality of Bacon's mind, by which he was preeminently distinguished—a quality, which of all others is the most distinctive of genius—was that variety, that universality of intellectual powers, which enabled him to embrace all nature in the ample vision of his capacious soul. Thus largely endowed, his faculties were kept in unceasing activity by their native force; the voice of fame was to him an unnecessary stimulus, and he never sought extensive and indiscriminate applause. Yet his studies were always the principal business of his life. His great aim in philosophical pursuits was to discover remedies for all human ills. Hence, he modestly stiles himself, in his letter to Fulgention, ‘the Servant of Posterity;’ and thought, and the event proved, himself to have been born for the use of human kind. \* \* \*

“At twelve years of age he entered Trinity College, Cambridge, graduating at sixteen. While in college he took issue with the Aristotelian system (then predominant) ‘not for the worthlessness of the author, to whom he would ever ascribe all high abilities, but for the unfruitfulness of the way; being a philosophy only for disputations and contentions, but barren in the production of works for the benefit of the life of man.’ At the age of twenty-eight he was appointed by Queen Elizabeth her counsel extraordinary, and formed, if he did not mature, the plan of his great philosophical work.”—*The British Plutarch*, Art. Bacon.



## JAMES WILSON (1742-1798), Pennsylvania

### SOVEREIGNTY

“Upon what principle is it contended that the sovereign power resides in the state governments? The honorable gentleman has said truly that there can be no subordinate sovereignty. Now, if there cannot, my position is that the sovereignty resides in the people. They have not parted with it; they have only dispensed such portions of power as were conceived necessary for the public welfare. This constitution stands upon this broad principle. \* \* \* When the principle is once settled that *the people* are the source of authority, the consequence is that they may take from the subordinate governments powers with which they have hitherto trusted them, and place those powers in the general government, if it is thought that they will be productive of more good. They can distribute one portion of power to the more contracted circle called state governments; they can also furnish another proportion to the government of the United States. Who will undertake to say as a state officer that the people may not give to the general government what powers and for what purposes they please? How comes it, sir, that these state governments dictate to their superiors? To the majesty of the people? When I say the majesty of the people, I mean the thing, and not a mere compliment to them. \* \* \* The truth is, and it is a leading principle in this system, that not the states only but the people also shall be represented. \* \* \* I have no idea that a safe system of power in the government, sufficient to manage the general interest of the United States, could be drawn from any other source or vested in any other authority than that of the people at large, and I consider this authority as the rock on which this structure will stand.”

George Washington sent his nephew, Bushrod Washington, to Philadelphia, in 1782, passing by the Wythes and Pendletons of Virginia, to study with Wilson, whom he paid \$500 to instruct the pupil.

—*The above is from debate in the Constitutional Convention.*

### THE PEOPLE THE SOURCE OF POWER

“The truth is that in our government the supreme absolute, and uncontrollable power remains in the people. As our constitutions are superior to our legislatures, so the people are superior to the constitutions. Indeed, the superiority, in the last instance, is much the greater; for the people possess, over our constitutions, control in act as well as in right.”

—*James Wilson, speech in Ratification of the Constitution in Penn.*

Sanderson, in his “Lives of the Signers of the Declaration of Independence,” calls Madison and Wilson the ablest members of the convention.



JEREMIAH M. WILSON, Washington, D. C.

## THE CONTRACT OF MARRIAGE

"But this defendant asks a jury to villify, traduce and blacken the character of a woman he had destroyed. Gentlemen, what are you going to do? We cannot have any more of those reparations of Absalom to Ammon. In those days it would have been simple. In these days the law has provided a javelin, not the javelin of the servants of Absalom, but your verdict. By that this wrong is to be repaired; no other way now. Before you the woman comes as the law says she shall, and what will you do? I invite you as my last words to impale him, hold him aloft, that the world may be warned and justice will cry amen and amen."

—*His concluding words in Pollard vs. Breckenridge, for breach of contract of marriage, Apr. 14, 1894.*

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## ORATORY

"It is a popular idea that those who are gifted with oratorical power have few other gifts, that their influence perishes with the moving of popular audiences and that they have not the power they show in arousing the multitude. In many cases this is so, but those who move public sentiment move it different degrees. Public sentiment also is of two different kinds; the voice of the people, which is the hurried result of the untrained and uninstructed emotions, and that voice of the people, uttered after due thought and experience, which is the solid and enduring basis of human action. Gales, which are but air in motion, may toss the surface of the seas into wild and ravening waves; but the great strength of the ocean is underneath it all and aided by the steadfast genius of man transports to every shore the products of every land.

"Men who stir the surface of thought for the moment may be inferior and command little permanent respect, but the great orators have left too many landmarks behind them to be confounded with retoricians and men of the moment. We have not one of his orations left by which we might judge for ourselves, but if there be anything in the testimony of all the men of his time, Julius Caesar is entitled to rank among the greatest orators of his age. Yet however much we may mourn over the passage of the Rubicon, we cannot deny to Caesar the highest rank of all those who have managed the affairs of practical life. Daniel Webster, who was our greatest orator, has never been denied the rank of a great man. Henry Clay, whose oratory was of that sympathetic kind which we most suspect, was the most powerful party leader who ever dictated his will to others. While we must acknowledge the faults of Cicero, we can also demonstrate that his great superior, 'The Orator' himself, has not only left behind him orations which are the models for the emulation of all the world, but also the memory of a life of patriotic devotion and wisdom, which, if the Immortal Gods had so willed, might have saved to Athens its pre-eminence among the cities of Greece and preserved the liberties of the ancient world."—*Thos. B. Reed.*



## WOODROW WILSON (1856- )

### PUBLIC SUPPORT

"I summon all honest men, all patriotic, all forward-looking men, to my side. God helping me, I will not fail them, if they will but counsel and sustain me."

—*Woodrow Wilson, 28th President of U. S. Born, Staunton, Va., 1856.*

### CHANGING MIND

"The minute I stop changing my mind as President with the change of all the circumstances in the world, I will be a back number."

—*Woodrow Wilson, address Railway Ass'n, N. Y. City, Jan. 17, '16.*

### AMERICA UNAFRAID

"America is not afraid of anybody. I know that I express your feelings and the feelings of all our fellow-citizens when I say that the only thing I am afraid of is not being ready to perform my duty. I am afraid of the danger of shame; I am afraid of the danger of inadequacy; I am afraid of the danger of not being able to express the great character of this country with tremendous might and effectiveness whenever we are called upon to act in the field of the world's affairs, for it is character we are going to express, not power merely."

—*Woodrow Wilson, speech in Cleveland, O., Jan. 29, '16.*

### CHARACTER BETTER THAN PEACE

"There is something that the American people love better than they love peace. They love the principles upon which their political life is founded. They are ready at any time to fight for the vindication of their character and of their honor. They will at no time seek a contest, but they will at no time craven to avoid it. Because if there is one thing that every nation ought to fight for, it is the integrity of its own convictions. We cannot surrender our convictions. I would rather surrender territory than surrender ideals, which are the chief staff of life for the soul itself."

—*Woodrow Wilson, to Railway Ass'n, N. Y. City, Jan. 27, '16.*

*Mr. Wilson graduated at Princeton, 1879; studied law at the University of Va., practiced in Atlanta, Ga., 1882-3.*

### LOUIS D. BRANDEIS

"Let me say, by way of summing up, my dear senator (Culberson), that I nominated Mr. Brandeis for the supreme court because it was and is my deliberate judgment that of all the men at the bar who it has been my privilege to observe, test and know, he is exceptionally qualified. I cannot speak too highly of his impartial, impersonal, orderly and constructive mind, his rare analytical powers, his deep human sympathy, his profound acquaintance with the historical root of our institutions and insight into their spirit, or of the many evidences he has given of being imbued to the very heart with our American ideals of justice and equality of opportunity; of his knowledge of modern economic conditions and of the way they bear upon the masses of the people, or of his genius in getting persons to unite in common and harmonious actions and looking with frank and kindly eye into each other's minds who had before been heated antagonists. This friend of justice and of men will ornament the high court of which we are all so justly proud."

—*Woodrow Wilson's letter to Senator Culberson, at the latter's request, May, 1916.*



## WILLIAM WIRT (1772-1834), Maryland

### READING AND ELOQUENCE

"Get a habit, a passion for reading; not flying from book to book, with the squeamish caprice of a literary epicure; but read systematically, closely, thoughtfully, analyzing every subject as you go along and laying it up carefully and safely in your memory. It is only by this mode that your information will be at the same time extensive, accurate and useful. \* \* \* To be buried in the law for eight or ten years, without the power of opening a book of taste for a single day! O, horrible! horrible! most horrible! O, for that wealth that would enable me to wander at large through the fields of general literature as whim or feeling might direct, for days and weeks and months together, and thus to raise, enlighten and refine my mind and heart, until I become a fit inhabitant for those brighter fields of light that lie above us. \* \* \* In your arguments at the bar let argument strongly predominate. Sacrifice your flowers, and let your columns be Doric, rather than Composite, the better medium is Ionic. Avoid, as you would the gates of death, the reputation of floridity."

—From letter to Dabney Carr, Dec. 17, 1810, 1 Kennedy's *'Life of Wirt'*, 262.

### PATRICK HENRY'S ELOQUENCE

"Patrick Henry's eloquence was poured forth from inexhaustible resources, and assumed every variety of hue and form and motion that could amaze or persuade, instruct or astonish. Sometimes it was the limpid rivulet, murmuring down the mountain side and winding its silver course between margins of moss, then gradually swelling to a bolder head, it roared in the headlong cataract and spread its rainbows to the sun; now it moved on in tranquil majesty, like a river of the West, reflecting from its polished surface, forest, and cliff, and sky; anon, it was the angry ocean, chafed by the tempest, hanging its billows, with deafening clamors, among the crackling shrouds, or hurling them in sublime defiance of the storm that frowned above."—*William Wirt's Life of Patrick Henry*, p. 312.

Thos. Jefferson thought the above passage "a little too poetical;" Judge Parker, "there was too much of it;" Judge Brockenborough thought it "too flowery;" Judge Cabell, that Jefferson's criticism was "groundless;" Mr. Upshur, to whom Wirt read it, pronounced it "beautiful." Mr. Clark to whom it was read, with tear-filled eyes and rapturous admiration, swore that "that was the very kind of writing that had made the 'British Spy' so popular." Wirt himself was at a loss how to decide, but thought he would "hazard it, though not without fear and trembling." Said he would "rather have faults than to have no beauties; and who that ever had beauties was without fault? The most beautiful author in the world is perhaps the fullest of faults as Shakespeare."

—*Wirt's 'Life of Henry'*.

### PAUCITY OF GREAT MEN

"I believe the paucity of great men in all ages has proceeded from the universality of indolence. Indolence is natural to man, and it is only the brave few who can 'clear the copse at a bound, break over the magic bourne and stretch away with 'an eye that never winks and a wing that never tires,' into new regions and new worlds, who distinguish themselves from the crowd, and rise to glory that never fades."

—From Letter to Francis W. Gilmer, Nov. 16, 1813, 1 Kennedys *'Life of Wirt'*, 324.



## COMMON SENSE

"Common sense is a much rarer quality than genius. Common sense instructs us when to speak, when to be silent, when to act and when to be still—and, moreover, it teaches us what to *speak* and what to *suppress*, what to do and what to *forbear*."

## THE ELOQUENCE OF MADISON

Wirt said, Madison being accused of a want of energy, that he stood up against Patrick Henry's opposition to the Constitution and carried the day in Virginia; that he resisted infraction of the Constitution, even by Washington. Said Wirt:

"But if true energy be evinced, as we think it is, by the calm and dignified, yet steady, zealous and persevering pursuit of an object, his whole conduct during the debate in Congress during the adoption and first years under the Federal Constitution, and while he was in the minority, is honorably marked with energy. And that energy rested on the most solid and durable basis, conscious rectitude; supported by the most profound and extensive information, by an habitual power of investigation which unraveled with intuitive certainty the most intricate subjects, and an eloquence, chaste, luminous and cogent, which won respect, while it forced conviction. Your idea of energy is a constitutional irritability; you indulge it, and you call that indulgence energy. Sudden fits of spleen, transient starts of passion, wild paroxysms of fury; the more slow and secret workings of envy and resentment, cruel taunts and sarcasm, the dreams of disordered fancy, the crude abortions of shortsighted theory, the delirium and ravings of a hectic fever—this is your notion of energy. \* \* \* Wretched, most wretched, is the fate of the writer or that man who deserts the plain highway of conscience and of candor for the dark and crooked mazes of intrigue and cunning of trick and misrepresentation; he may, as the wise son of Sirach has said, 'work his way for a time, like a mole under ground, but by-and-by he blunders into light and stands exposed with all his dirt upon his head.'"

—*From letter to Richmond Enquirer (to those objecting to Madison for president, in 1808), 1 Kennedy's 'Life of Wirt,' 221-2.*

## RESTRAINT

"Mr. President, there is no good that does exist, or can exist, unless guarded by restraint. The best things that we enjoy, the noblest qualities that we possess, become vicious by excess. Mercy degenerates into weakness, generosity into waste, economy into penury, justice into cruelty, ambition into crime. \* \* \* Look where you will, then, sir; above you, around you, below you, you see that the great conservative principle is restraint—that same restraint which holds human society together."

—*William Wirt.—From speech in defense of Judge Peck on impeachment before the U. S. Senate, 1831.*

"Wirt's career has been one of the longest and most brilliant in the U. S.," said Webster.

## TRISTRAM SHANDY—BY LAWRENCE STERNE

"Tristram Shandy is a whimsical book which everybody justly censures and admires alternately; and which will continue to be read, abused and devoured, with ever fresh delight, so long as the world shall relish a joyous laugh, or a tear of the most delicious feeling."

—*Wm. Wirt, 'The British Spy,' p. 187.*



## A JUST GOVERNMENT

"Algernon Sidney has said that he deems all studies unworthy the serious regard of a man, except the study of the principles of a just government."—*Wm. Wirt, "The British Spy," p. 176.*

Wirt was Attorney-General of the U. S. for 12 years, the longest term ever held by any man in the history of the country.

## THE LAW—A FEUDAL CASTLE

"There is a great deal of law learning that is dry, dark, cold, revolting; but it is an old feudal castle, in perfect preservation, which the legal architect, who aspires to the first honors of his profession will delight to explore, and learn all the uses to which its various parts used to be put; and he will the better understand, enjoy and relish the progressive improvements of the science in modern times."—*William Wirt.*

## CURIOSITY

"Seize the moment of excited curiosity or any subject to solve your doubts; for if you let it pass, the desire may never return, and you may remain in ignorance."—*Wm. Wirt.*

WILLIAM PINKEY: "Pinkey wielded the club of Hercules adorned with flowers."—*William Wirt.*

## MOVED TO RICHMOND WHEN 34

Up to 1806, when 34, he moved from Norfolk to Richmond. And was noted principally as a criminal lawyer.

## HIS AMBITION

"Wirt's ambition was neither legal nor political, but literary. It is undeniable that he was never a 'black letter' lawyer. He himself frequently and bitterly complained that he could never descend into the depths plumbed by others. His legal ambitions were of two kinds; that which arose *extra* from the incentive of the necessary support of his family, and more potently, that which arose from his inner spirit of emulation. \* \* \* For the law, *per se*, he had no especial enthusiasm. He grew up with it, and it was only his comfortable, and sometimes pleasant means of livelihood. But he exulted in the glorious dust of the arena, and arose like Antaeus from every grapple doubly strong for its successor."

—*John Hadly Hall, on "Wirt," in Great American Lawyers, vol. 2, p. 277.*

## SUMMARY OF CHARACTER AND ATTAINMENT

"In summing up his character and attainments, it is impossible to credit him with genius. Talent he had in profusion. He possessed an adaptability which carried him on from a raw German boy to the pink of old Virginia gentility, and from a scatter-brained young circuit-rider to the steadiest among the brilliant lights of the bar. He had a vivacity of mind and of fancy which carried him in full career against the object of his more immediate ambition. And, with it all, he had an unfailing good judgment, which made him his own best critic, enabled him to appraise at its true value the glittering and superficial, and impelled him through life to strive continually to be the solid advocate rather than the showy orator. In this he occasionally failed, but he never ceased to deplore his own excesses, and to hark back to his ideals, whom he often



declared were John Locke and John Marshall. During his life he crossed swords with all the great lawyers of that great period of legal history, with Pinkney, Webster, Sergeant, Harper, Randolph, Taney, and many others. Jefferson, Madison, Monroe, Kent and Adams were his personal friends. Marshall was his avowed model. For Calhoun he expressed the warmest regard, while repudiating the doctrine of nullification. Only for Edmund Randolph and Pinkney does he seem to have entertained feelings of antagonism. These were serious men, conscious of power, and domineering by nature. And it is probable that their majestic pose was an offense to the lighter disposition, and the incentive to the mischievous wit of the younger man."

—*John Handy Hall on "Wirt," Gt. Am. Lawyers, Vol. 2, p. 306.*

### RUFUS CHOATE ON WIRT

"Wirt, at thirty-five years of age, was, I think, the most interesting man of the profession of our country. Webster and Pinkney had not then come out in national relief. With them letters were an after acquisition, with Wirt the literature was originally congenial. I didn't hear him in his prime (Choate read law with Wirt, in 1821), for the winter I was in his office he was struck down in the middle of preparing a great case by a sort of paralysis, brought on entirely by overwork. Wirt told me once that he sat right behind Webster in the Dartmouth College case, and he didn't hear anything of that pathetic peroration which Goodrich describes; at least he wasn't impressed with anything in particular about it. I think Wirt's argument in Burr's case, and on the motion to exclude all the testimony as to what occurred in other parts than the venue, his greatest effort on record."

—*Parker's Reminiscences of R. Choate, pp. 271-2.*

### TAKING ADVANTAGE OF A TECHNICALITY

In 1806, George Wythe, a signer of the Declaration of Independence, and Chancellor of Virginia, lived in Richmond, and a nephew named Swinney, to whom it was known that he had left most of his property by will, was one of his family. One morning Swinney came into the kitchen and in the presence of a negro cook, dropped what she described as something white in the coffee pot. The Chancellor soon after breakfast became violently ill, with symptoms of arsenical poisoning. A man servant drank of the same coffee and died with similar symptoms. The coffee grounds were thrown out in the back yard, and some chickens which ate them died. An examination by chemists showed the presence of arsenic in the coffee grounds, in large quantity. The Chancellor lived long enough to alter his will and revoke its disposition in favor of his nephew, who was soon afterwards indicted for murder.

Swinney's mother applied to Wirt to defend him. Wirt took counsel with one of the judges of the State, who advised him strongly to do so, and said that he ought not to hesitate a moment. He accepted the retainer and appeared for the accused. There was a perfect defense. The law of Virginia at that period excluded the testimony of negro witnesses when offered against a white man. The negro cook was the only witness that could connect Swinney with the crime. She being excluded, the jury, when the case came on, rendered a verdict of acquittal. Says Simeon E. Baldwin, in *The Young Man and the Law*, page 85: "There was a perfect defense. Wirt was right. If Virginia then had an ill-considered statute, which prevented the State from offering legal proof of the guilt of the accused, the defense was perfect. Swinney could have honestly raised that point, namely, the objection to the evidence and the proper manner of taking advantage of it. Not knowing these things, he was entitled to ask the aid of those who did."



## EDWARD O. WOLCOTT (1848-1905), Colorado

### TRIBUTE TO THE JEWS

"From the earliest times the Jews furnished the physicians of the world. In the tenth century there was no court in Europe where they were not the official physicians. For hundreds of years they held their prestige; and their discoveries, their learning, and their independent thought probably did more to tear down the walls of superstition in the Middle Ages and make way for the Reformation than any other influence.

\* \* \* Long before the Christian era, the Jews had emigrated into every portion of the known world, and were everywhere welcomed. Alexander the Great had planted a colony of them in Alexandria, and Caesar counted them among his most brave and loyal subjects. For one thousand years they flourished in spite of sporadic persecution, until, at the close of the tenth century they were the advisers of every court, learned in all the professions, and influential in every business of the age. They were confined to no particular department of industry, but were farmers, artisans, merchants, physicians and lawyers; and, by the way, were the first to apply hydraulics to irrigation. It is often said that they were the usurers and money-lenders of the world. Do you know why? They were compelled to put their wealth into money because Christian intolerance forbade them by law from practicing any profession, from owning land, and from following any calling except the most menial, and finally drove away from the haunts of men those who were not butchered as an example to the rest, a persecution instituted solely because they clung to their faith in one God, whose commandments they believed they had received directly from His hands, amid the smoke and clouds of Sinai."

—*Remarks upon laying the corner-stone for a Jewish Hospital, in Denver, Colo., Oct. 9, 1892.*

### EDWARD O. WOLCOTT'S ABILITY AS A LAWYER

"Wolcott was a good lawyer in that he never piled up a lot of useless matter. It was his habit in presenting his cases to pick out two or three strong points. He was an analyzer, and he did not waste either his time or the time of the Court. He selected the points, decisive of the cases he cited, and did not read many authorities; would argue the principal questions at issue, and let the rest go. Thus he avoided confusing the Court and made sure that every point counted. \* \* \* He was a man of engaging personality; a lawyer of splendid insight; an orator of convincing power. His success in life was marked, but was not beyond his deserts. He was absolutely honest in his views, and we have had few public men, who were so courageous in exposing their real convictions. Whether in private, or public life, he thought for himself, and he was never swerved from a purpose by self-interest or public clamor.

—*Testimony of Justice David J. Brewer.*

### HOW HE PREPARED AND DELIVERED SPEECHES

"When Wolcott was preparing a speech, it was his habit to lock the door, light a cigar, and begin pacing the room just like one of the wild animals at the zoo. After a long time thus spent, he would begin dictating between puffs. He was a good dictator, his thoughts coming smoothly and his grammar nearly faultless. Even, for his unwritten speeches, he made exhaustive preparation by careful investigation. Notes were



made and elaborated upon, but his memory and ready wit were depended upon to meet the exigencies of any given occasion. When he got into action in the Senate on an extemporaneous speech he kept to his notes for a time; but as interruptions came, and he lost his temper (which was no trouble at all, as Senators delighted to work him up, by prodding), he threw his notes away or couldn't find the place again, and just let himself go. It was at this period that the real speech began and he was generally allowed to finish, for oratory had broken loose."

—1 *'Life and Character of E. O. Wolcott,'* 477, by Thos. Fulton Dawson.

### THE HEREAFTER

"Only a few days before he (Hon. John Simpkins) died, we stood together on the heights near Arlington overlooking the Potomac. It was a glorious morning in early spring; the city lay at our feet bathed in mist, and the swelling hills and the broad river stretched far away until they mingled with the horizon. He spoke of the wonderful beauty of the landscape and the pleasure it gave him. When I was next in his presence, it was as a mourner at the touching burial service of that beautiful religion which he cherished, and great banks and masses of flowers covered all that was left of him. And as my thoughts turned back to that vision of hill and river, closed to him forever, I realized that perhaps his eyes had already opened where no horizon limited his gaze, in pure ether, illumined with the 'white radiance of eternity,' he looked with unclouded vision upon fairer scenes."

—*House of Representatives, Feb. 18, 1899, Memorial Services to Hon. John Simpkins, late member of the H. of Rep.*—1 *Life and Character of E. O. Wolcott, 553-4.*

### JOKE AT DELMONICO'S, N. Y.

While dining at Delmonico's, in New York, with some friends, a Colorado man, who was noted at home for his vanity, entered Delmonico's, not observing Wolcott and his friends. "Watch me have some fun," said Wolcott.

He then arranged for the manager to let him (Wolcott) pay the bill, and tell the gentleman (the Denver, Colorado, man) that his reputation was such that he, the manager, felt it an honor to have him as his guest at dinner, saying: "Colonel, there is no charge. Your reputation is such that it has preceded you, and the house feels so flattered at having you dine here that it desires you to accept its hospitality!"

The deception was not suspected, and the air assumed by the visitor as he left the hall was fully enjoyed by the Senator and his friends. Ed Wolcott, as he was familiarly called, said, "It was worth the price."

—*Dawson's Life of Wolcott, Vol. 1, 444.*

### BUFFALO BILL AND BILL BRYAN

"Nebraska has produced two great men, Buffalo Bill (W. F. Cody), and Bill Bryan; and there is this difference between them—Buffalo Bill has a show, and Bill Bryan has no show."

### "RATS"

At a political meeting Wolcott was interrupted by a lot of rowdies, shouting "Rats." The speaker paused for a moment, and waiving his hand to the gallery filled with colored folk, said: "Waiter, come down and take the Chinaman's order!"



## LEVI WOODBURY (1789-1851), New Hampshire

### A FEARFUL THING TO TAKE HUMAN LIFE

“Every symptom corresponds with what would be expected from death by starvation. The collapsed state of the abdomen, the emptiness of the stomach and intestines, the small size of the former, the total absence of fat from beneath the skin, and from every portion of the body. \* \* \* It is admitted, most of these appearances may result from certain emaciating diseases, such as those of the liver, of the mesentery glands, of the stomach, etc.; but here the liver was sound, the glands not diseased, and every organ performing its accustomed functions. Here, too, the prisoner would have been alarmed at the deadly change, had that change happened by a secret disease, by some species of marasmus, and not by other causes well known by him. Hence, no information of illness was given to neighbors, or to its miserable mother, no nurse, no physician, no astonishment by him, at its death; and hence conscience, the worm that never dies, goaded him into fright and resistance to legal process. Alas! had the miserable mother been notified of its approaching end, and emboldened by that maternal affection which imparts courage to the most timid animals, had she dared to enter the dwelling of her seducer, and the prison of her child, and gazed upon the living skeleton, she should not have known her son, reduced to such a loathsome wreck of despair, cold and famine!

“It is a fearful thing to see the human soul take wing, in any shape, in any mood. But to see the healthy bloom of infancy fade by hunger, the buoyant spirit broken down by blows, the heart drooping in solitude and misery, and nakedness and frost joining to change the elastic step of youth into the tottering decrepitude of age; to see the scene closing its stifled groans, in a deserted garret, without a mother’s tears or a father’s sympathy; and to be hurried to the grave like carrion with no mourner, or a sigh, is too horrible for a Christian community ever to endure, without fixing on its author the brand of Cain. Yet this course of treatment not only caused the child’s death, but it originated in the most horrible malice. Because each treatment is consistent with nothing but malice; death was the natural and obvious consequence of it. What other consequence could have been anticipated? A person of adult age, with a constitution of iron, could not be expected to enjoy health, under diet and discipline so unusual and severe. It would require the aid of the invincible mind or of some o’er mastering passion or of some all-absorbing principle in religious or political martyrdom, to sustain the body at all, any great length of time, under such a mass of privations. But a child is not a monk, a Dervise, or a Brahmin, to undergo the penance of hunger, cold and the scourge, for weeks and months, with impunity. Of the father and his children, described by Dante, who perished in a dungeon by starvation, the youngest yielded first under his agonies; and their tyrant, like him who immured and chained to the floor the prisoners of Chillon, beheld the oldest and most resolute of heart against oppression live longest, to mock that despotic power, which, with all its myrmidons and wrath, is ever unable to chain the spirit. Youth is most bound up in the senses; it requires more frequent and nourishing diet, and can endure exposure and suffering less firmly, than mature age.

“The respondent, in this case, was the father of a family, and therefore well knew the wants of children, and the propriety not only of ample food and clothing, but of warm lodging and decent cleanliness. He furnished these necessities of life to his other children, and must have withheld them here with the full consciousness of the consequences,



and with the felonious design to remove from him the living monument of his infamy. He also had abundant means to provide every necessary and comfort for this child, as he did for his other children. He was admonished of the consequences long before his brutality terminated in the death of his victim; and every person of common sense, as well as the physicians, must be conscious that such an end could not be otherwise than natural, obvious, and, indeed, inevitable, from such cruel privations.

“ \* \* \* The nauseating filth and vermin which appeared on the body, which undressed for its winding-sheet and coffin, could not have been unknown to him, any more than its ulcerated head; and all would have been prevented or remedied, had they not formed a part of the systematic brutality to be exercised on his innocent victim. The appearance on dissection, the absence of everything but the mere organs of life, and a fleshless skeleton, these appearances, also, without any previous disease, or call for medicine, or physician, though one had attended on the prisoner himself within a few weeks, and last, though not least, the missing toes and joints, attributable to no possible cause but frost and nakedness, and about which no medicine, surgeon, or nurse, had ever been employed, are all confirmations of the most hardened malice, and confirmations strong enough, one would think, to convince the sternest infidel.

“Go home, then, gentlemen of the jury, if you can after this evidence, acquit the prisoner, go home and tell the friends and the poor how they may be threatened, scourged, frozen and starved, and thrust into a garret to die, without punishment on their oppressors, in a country boasting of its humanity, its equal laws, and its impartial justice! Send home again, also, to his former neighborhood, the heartless wretch before you, where his return will carry dismay like the approach of pestilence, and encourage him to repeat these enormities on his other illegitimate offspring, who may chance to fall within his merciless power! Give to all others similarly situated the same humane advice and countenance! But more. Your verdict may secure or invade, ere long, even the hearths and altars where a still nearer and dearer interest exists.

“The things of this world are rapidly passing away, and many of us must soon descend to the same narrow dwelling with Alfred Furnald. Into whose hands our tender offspring may fall, and under what desolate circumstances, it is not given us to foresee. But hand down, if you can, to future juries, sitting on the trial of a destroyer of any of your orphan children, a precedent, that the murder is mitigated, if that destroyer only prolongs their agonies to months, instead of minutes! Say, if you will, also, to other States and other countries, which your verdict may visit on the wings of the press, that the talk among us, concerning humanity, civilization and Christianity, is merely to keep the promise to the ear; but that, for your single selves, you either fully approve the prisoner's conduct, or feel greater sympathy for him than for his famished child, cut off at the dawn of being by the prisoner's relentless malice, and in a manner the most horrid that imagination can paint! \* \* \*

“I know that from those recesses his emaciated frame cannot be re-animated till the resurrection of the just; but had the mantle of the prophet descended on me, how gladly would I hasten to breathe his dead bones into immediate life! Even *now*, should you meet the gaze of his sunken and imploring eyes, you should look on his cold skeleton hands, raised to the jury as his only human refuge for redress, and should you listen to the pleadings of his bloodless lips!

“But go and acquit his destroyer, if you must, the departed spirit probably hovers over us, to learn your determination. If, like the prisoner, you can still turn a hard heart and a deaf ear to its wrongs, it must re-ascend to the God of the fatherless and the forsaken, and hereafter obtain that justice which is now withheld! In the meantime, it may be well for us all to remember that we, likewise, must ascend to the dread



tribunal of the same God; and when there meeting the deceased in judgment, that we must answer his accusing spirit for any dereliction of duty which the recording angel may register against us in the present transaction. And as you then may wish you had now acted, so I entreat you to act; and to say that the prisoner is or is not guilty of the crime whereof he here stands charged."

—*In a speech for the prosecution of Amos Fernald and Abigail, his wife, of their child, Alfred Fernald, of five years of age, in 1824.*

Woodbury graduated at Dartmouth, at the age of 20; studied law under Judges Reeves and Gould, at Litchfield, Conn.; commenced practice in Francestown, N. H., in 1812; Governor of N. H., 1823 at 34; in Congress in 1825 at 36; Senator same year; Secretary of Navy and Treasury, under Jackson; Associate Justice of the United States Supreme Court, 1845, till death, 1851, at Portsmouth, N. H.

Says Hampton L. Carson: "He is best known for his services as a Senator of the United States, but his dissenting opinion in *Waring v. Clarke*, 5 Howard, 441 (1847), is marked by such extraordinary and powerful reasoning, in which he denies that the admiralty jurisdiction extends within the body of a country even upon tide waters, that it is matter of doubt whether his capacity as a jurist was not greater than a long life of public service had proved to be as a statesman."

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## MARK TWAIN

"As Bacon made all learning his province, so Mark Twain has made all life and history his quarry, from the Jumping Frog to the Yankee at Arthur's Court; from the inquested petrification that died of protracted exposure to the present parliament of Austria; from the Grave of Adam to the mysteries of the Adamless Eden known as the league of professional women; from Mulberry Sellers to Joan of Arc, and from Edward the Sixth to Puddin' head Wilson, who wanted to kill his half of the deathless dog.

Nevada is forgiven its decay because he flashed the oddities of its zenith life on pages that endure. California is worth more than its gold, because he showed to men the heart under its swagger. He annexed the Sandwich Islands to the fun of the nation long before they were put under its flag. Because of him the Missouri and the Mississippi go not unvexed to the sea, for they ripple with laughter as they recall Tom Sawyer, Huckleberry Finn, Poor Jim and the Duke; Europe, Asia Minor and Palestine are open doors to the world, thanks to this Pilgrim's Progress with his 'Innocents Abroad.' Purety, piety and pity shine out from 'Prince and Pauper' like the eyes of a wondering deer on a torch-lighted night from a wooded fringe of mountain and of lake."

—*St. Clair McKelway, Columbia, Mo., (1845- ), at dinner given Samuel L. Clemens [Mark Twain] by the Lotus Club, N. Y. City, Nov. 11, 1900.*



JAMES M. WOOLWORTH (1830- ), Nebraska

### THE PROFESSION OF LAW

"The profession of law is not a craft, or a trade, or a venture. It is not a contrivance for the benefit of lawyers. It cannot be worthily or even decently practiced simply for gain. \* \* \* Hobbes was the greatest political philosopher England ever produced. \* \* \* Law is a rule of civil conduct by which organized conscience or by legislative command obliges its members to do or forbear a class of acts."

—*James M. Woolworth.*

It was the opinion of the late Charles O. Tichenor, of the Kansas City Bar, that Mr. Woolworth was one of the ablest lawyers in the West.

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### PEOPLE OF THE NEW ENGLAND STATES

"The Asiatic races are worn out; Delhi and Jerusalem as dead, politically, as Babylon; the African race sunk with Carthage and Egypt; Europe is growing old, if not decrepit; but who can conceal from himself—who that runs may not read as if written on tablets of stone by the finger of Deity—that this new world, whether our people be Norman or Saxon, Celt or Teutonic in origin, has a new theatre for new principles? Longer maturing in New England, but in some measure common to the whole Union, and which tend to uphold rather than destroy the reign of order and law and justice, and which, if diffused gradually but thoroughly, will tend to make a great fraternity of mankind.

"This hope rests not on loose generalities or highly sounding epithets, friendly to popular rights and popular power, but on solid foundations, on written constitutions, equal legislation, the trial by jury, *habeas corpus*, equal distribution of estates, and all these with much more guaranteed as well as enforced by help of those free schools and free churches and free institutions before alluded to, which distinguish us so strikingly from any of the races and governments that have preceded us. In all this, sir, far from us be another thought, with which at times we have been reproached, that this hope, and our new mission as a people, does or can rest on any league of Roman violence, or on revolutionary anarchy, or Mohammedan conversions by the sword, but rather is it that, since the Mayflower landed the first Pilgrim on our shores, the design, equally pervading our whole people, is believed to have been, and I hope ever will be, to use the sword of justice rather than of conquest, accompanied by her equal scales for high and low, rich and poor, and, by the aid of superior intelligence and morals, to harmonize liberty with law, and the rights and power of the people at large with public order, public security and a rapid progress in everything useful to humanity. Let me offer the following sentiment for New England: The land of free schools, free churches and free suffrage."

—*Speech by Levi Woodbury at meeting of the New England Society, Washington, D. C., 1845.*



## GEORGE WYTHE (1726-1806), Virginia

### DUTY OF A JUDGE

“Among all the advantages which have arisen to mankind, from the study of letters, and the universal diffusion of knowledge, there is none of more importance than the tendency they have had to produce discussions upon the respective rights of the sovereign and the subject; and upon the powers which the different branches of government may exercise. For, by this means, tyranny has been sapped, the departments kept within their own spheres, the citizens protected, and general liberty promoted. But this beneficial result attains to higher perfection, when those who hold the purse and the sword differing as to the powers which each may exercise, the tribunals who hold neither are called upon to declare the law impartially between them. For thus the pretensions of each party are fairly examined, their respective powers ascertained, and the boundaries of authority peaceably established. Under these impressions I approach the question which has been submitted to us; and, although it was said the other day by one of the judges, that, imitating that great and good man, Lord Hale, he would sooner quit the bench than detrmine it, I feel no alarm; but will meet the crisis as I ought; and in the language of my oath of office, will decide it, according to the best of my skill and judgment.

“I have heard of an English Chancellor who said, and it was nobly said, that it was his duty to protect the rights of the subject against the encroachments of the crown; and that he would do it, at every hazard. But if it was his duty to protect a solitary individual against the rapacity of the sovereign, surely it is equally mine to protect one branch of the legislature and, consequently, the whole community, against the usurpations of the other; and, whenever the proper occasion occurs, I shall feel the duty and fearlessly perform it. Whenever traitors shall be fairly convicted, by the verdict of their peers before the competent tribunal; if one branch of the legislature, without the concurrence of the other, shall attempt to rescue the offenders from the sentence of the law, I shall not hesitate, sitting in this place, to say to the general court, *Fiat justitia ruat coelum* (Let justice be done, though the heavens fall); and, to the usurping branch of the legislature, ‘you attempt worse than a vain thing; for, although you cannot succeed, you set an example which may convulse society to its center.’ Nay more, if the whole legislature, an event to be deprecated, should attempt to overleap the bounds prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers at my seat in this tribunal, and, pointing to the constitution, will say to them, ‘here is the limit of your authority; and hither you go, but no further.’ ”

—*Wythe's opinion in the Virginia Supreme Court of Appeals, 1782.*

He had as pupils, Thos. Jefferson, James Monroe, John Marshall, St. George Tucker, Spencer Roane, Archibald Stuart, John Wickham, John Brown (of Ky.), Jas. Breckenridge, John Coalter, Littleton Waller Tazewell, Buckner Thurston, Wm. Munford, Jas. Innis, Geo. Nicholas, and Henry Clay. Jefferson said of Wythe: “No man ever left behind him a character more venerated than George Wythe;” and Lord Brougham of the speech from which the above extract is taken, “The greatest refinement of which any state or circumstances has ever given rise or to which any age has even given birth.”



## JEFFERSON'S TRIBUTE

"Among his rivals at the bar the most formidable was Edmund Pendleton, who resembled Lord Mansfield in the character of his intellect, and who from his 12th year had never lost a day from the eager pursuit of his profession. He had the advantage of Wythe in personal appearance, which was singularly handsome, in his voice which was clear and silver-toned and his manners were charming and fascinating. But as actors on the stage, Pendleton was bold and aggressive. Then, Pendleton was far from possessing the information of Wythe, and he was rather a great advocate than a deep lawyer. Nevertheless, in debate, while Wythe was more solidly argumentative, Pendleton was more subtle and captivating; and in their frequent contests at the bar the advantage, in the popular judgment, lay as a rule with Pendleton. Wythe generally bore these apparent defeats with reserve and equanimity, but he lacked neither quickness of parts nor colloquial talents; and sometimes when aroused by some improper remark, he would swiftly retort with terrible severity. A story is told of a remark made by him to Lord Dunmore, which illustrates his wit and talent for biting sarcasm. Wythe and Robert Carter Nicholas appeared for one side, before Lord Dunmore who presided as Chief-Justice, and Mr. Pendleton for the other. Wythe demanded an immediate trial, while Pendleton desired a continuance, as Mr. Mason, his colleague, was absent and there were two counsel on the other side. Lord Dunmore did not like Wythe, and, forgetting the dignity of his position, had the indelicacy to say: 'Go on, Mr. Pendleton, for you will be a match for both of them.' 'With your Lordship's assistance,' retorted Wythe, bowing with mock politeness."—1 *Great American Lawyers*, 73-4.

## WYTHE AS A STATESMAN

"As a statesman Wythe was identified with the most advanced views as to the relations of the colonies with Great Britain, and both defended and signed the Declaration of Independence. He was the author of the beautiful State seal of Virginia, and one of the chief causes of the adoption of the Federal Constitution by Virginia; as a teacher, he was the first law professor in the U. S., and set the example of moot courts, and moot legislatures. And as a lawyer and judge, he was profound and absolutely just, had a great part in shaping the first laws of the infant commonwealth, was the first to lay down the principle of the overruling power of the judiciary, and dared to afford the example, as he did in the British debt cases, of a judge utterly fearless of popular influence."

—*President Tyler, of William and Mary College*; 1 *Great American Lawyers*, 89-90.

## HIS NOTED LAW PUPIL

Jefferson read law five years with Wythe, beginning in 1762, at Williamsburg. Probably preferred Wythe as a teacher over Peyton Randolph and John Randolph, son of his great uncle, Sir John Randolph, also living at Williamsburg, and were eminent lawyers and his attached friends.

## HENRY CLAY'S TRIBUTE

"Mr. Wythe's personal appearance and his personal habits were plain, simple and unostentatious. His countenance was full of blandness and benevolence, and I think he made, in his salutations of others, the most graceful bow that I have ever witnessed. A little bent by age, he generally wore a gray coating. And when walking carried a cane. Even at this moment, after the lapse of more than half a century since I last saw him, his image is distinctly engraved on my mind."



## LEARNED AND PEDANTIC

“Wythe, above all early statesmen, was deeply learned in the law; had traced all its doctrines to their fountain-heads, delighted in the year-book, from doomsday down; had Granville, Bracton and Fleta bound in collects; had all the British Statutes at full length, and was writing elaborate decisions every day, in which to the amazement of county court lawyers, Horace and Anlus Gellius were sometimes quoted as authorities. He carried his love of antiquity rather too far, for he frequently subjected himself to the charge of pedantry; and his admiration of the gigantic writers of Queen Elizabeth’s reign had unfortunately betrayed him into an imitation of their quaintness. \* \* \* Yet, he was a man of great capacity, powerful in argument, elegantly keen and sarcastic in repartee, long the rival of Mr. Pendleton at the bar, whom he equaled as a common lawyer and greatly surpassed as a civilian. \* \* \* No man was ever more entirely destitute of art. \* \* \* This simplicity and integrity of character sometimes exposed him to the arts and sneers of the less scrupulous. \* \* \* But he was not only pure, but above all suspicion.”

—*Wirt’s Sketches of the Life of Patrick Henry, also Warren’s Hist. of Am. Bar, 244-5.*

## JOHN RANDOLPH’S ESTIMATE

“He lived in the world without being of the world; that he was a mere incarnation of justice, that his judgments were all as between A and B; for he knew nobody; but went into court, as Astraca was supposed to come down from heaven, exempt from all human bias.”—*Warren’s Hist. Am. Bar, 345.*

## ANDREW J. MONTAGUE ON WYTHE

“George Wythe, the first chancellor of Virginia, and the first judge who ever declared an act of the Legislature null and void, because contrary to the Constitution; and as a chancellor easily ranking with Kent.”

—*Hon. Andrew J. Montague, Governor of Virginia, in an address at Washington, D. C., Apr. 13, 1902, on “Jefferson as a Citizen of the Commonwealth of Virginia.”*

## JEFFERSON’S ‘NOTES ON VIRGINIA’ SENT WYTHE

Jefferson in sending Wythe a copy of his “Notes on Virginia,” from Paris, Aug. 13, 1786, says: “Your wishes, which are laws to me, will justify my destining a copy for you, otherwise I should as soon have thought of sending you a horn-book; for there is no truth in it which is not familiar to you, and its errors I should hardly have proposed to treat you with.”—*See vol. 1, pp. 166 to 170, Jefferson’s Works in 20 vols.*



## BARRY YELVERTON, LORD AVONMORE (1736-1805), Ireland

### A TEDIOUS SERMON

"Well, my lord, how did you like the sermon," said a tedious preacher to Yelverton, after the service.

"Oh! most wonderfully," replied Yelverton. "It was like the peace of God: it passed all understanding, and, like his mercy, I thought it would have endured forever."

He was an Irish lawyer, and afterwards judge; educated at Trinity College, Dublin; Attorney-General, 1782; elevated to bench, 1783; created Baron Avonmore, 1795, and in 1800 Viscount. Of insignificant appearance, remarkably eloquent, as a judge was inclined to take the view of an advocate. Was familiar with the models of antiquity and his mind was imbued with the spirit of the orators of Greece and Rome. He was a fit precursor of Curran, his dearest friend, and the beloved of the good and great of Ireland. He was equally distinguished as lawyer, orator and statesman.

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### DESCRIPTION OF CURRAN BY CHAS. PHILLIPS

"When I was called to the bar Curran was on the bench; and, not only bagless, but briefless, I was one day taking the idle round of the hall of the Four Courts, when a common friend told me he was commissioned by the Master of the Rolls to invite me to dinner that day at the Priory, a little country villa about four miles from Dublin. Those who recollect their first introduction to a really great man may easily comprehend my delight and my consternation. \* \* \* Never shall I forget my sensations when I caught my first glimpse of the little man through the vista of his avenue. \* \* \* There he was—his face almost parallel with the horizon—his under lip protruded and the impatient step and the eternal attitude only varied by the pause during which his eye glanced from his guest to his watch and from his watch reproachfully to his dining-room. \* \* \* The moment he perceived me he took me by the hand, said he would not have anyone introduce me, and with a manner which I often thought was *charmed*, at once banished every apprehension and completely familiarized me at the Priory. I had often seen Curran—often heard of him—often read him, but no man ever knew anything about him who did not see him at his own table with the few whom he selected. He was a little convivial deity. He soared in every region and was at home in all; he touched everything and seemed as if he had created it; he mastered the human heart with the same ease he did his violin. You wept, and you laughed, and you wondered; and the wonderful creature who made you do all at will never let it appear that he was more than your equal, and was quite willing, if you chose, to become your auditor."

—From *'Life of Curran,'* by his son, 381-2.



SIR PHILIP YORKE, LORD HARDWICKE (1690-1764),  
England

WAR

"It is a self-evident proposition that being educated and trained to arms, must give a distaste for all civil occupations. Amongst the common people it introduces a love of idleness, of sports, and at last, of plunder."

—*Speech in the House of Lords, 1756.*

CROMWELL: "Cromwell gave more frequent proof of an uncommon penetration into futurity than any man living or dead."—*Lord Hardwicke.*

WOMAN'S VIRTUE: "The virtue of a woman does not consist merely in her chastity."—*3 atk. 339.*

LORD MANSFIELD'S ESTIMATE

"If you wish to employ your abilities in writing the life of a truly great and wonderful man in our profession, take the life of Lord Hardwicke for your object; he was, indeed, a wonderful character, he became Chief Justice of England, and Chancellor, from his own abilities and virtues."

LORD JOHN CAMPBELL'S OPINION

"Hardwicke is universally and deservedly considered the most consummate judge who ever sat in the Court of Chancery."

LORD ELDON'S CHARACTERIZATION

"Lord Hardwicke was one of the greatest lawyers who ever sat in Westminster Hall. He was a great man both as a common lawyer and a judge in equity."—*2 'Twiss' Life of Eldon,' 414.*

LEGALLY WISE

"It would be difficult to find in any age or nation, as the production of a single mind, a more various or comprehensive body of legal wisdom than is contained in the reports of Atkyns and Vesey (Hardwicke's Decisions)."—*3 'Life of Hardwicke,' by Harris, from 'Law Mag.', 88.*

E. P. WHIPPLE, "SPIDER OF THE LAW"

"Henry Fox, in a hot attack on Lord Chancellor Hardwicke, who was supposed to have no desire to reform the many abuses of his office, exclaimed: 'Touch but a cobweb in Westminster Hall, and the old spider of the law is upon you, with all his vermin at his heels'."—*'Literature and Life,' 241, by E. P. Whipple.*

WISDOM

"No man is wise, but you take into consideration the weakness of another, a maxim more eminently true of political wisdom, which consists very often only in discovering designs which never could be known but by the folly or treachery of those to whom they are intrusted."

—*1 Life of Lord Hardwicke, 503.*



## INNOVATION

"The wantonness of innovation is a dangerous disease of the mind; in a private station it prompts men to be always discontented with what they find, and to lose the enjoyment of good, in search of something better."

—*Idem*, 490.

## LIBERTY OF THE PRESS

"If the liberty of the press consists in defamation, it were much better we were without such liberty. The words 'the liberty of the press,' are improperly used to express a right, which is peculiar to the press, of publishing to the world any defamatory matter to the prejudice of superior, inferior or equal. Before the discovery of printing, very strong statutes were still in force, and none of them has since been repealed. Hence from the expression, the liberty of the press, it can never be understood any liberty which the press acquired, and which was unknown before the discovery of printing."—*Idem*, 430-1.

## ANCIENT LANGUAGES

"Without a competent skill in the ancient languages, you will want the inexpressible pleasure and advantage, that can only be drawn from those immortal patterns of nervous, beautiful writing, and virtuous action, which Greece and Rome have left us."—1 *'Life of Hardwicke,'* 392

## TRAVELING

"One fundamental error is traveling too early. The mind of a young man wants to be fitted and prepared for this kind of cultivation; and until it is properly opened by study and learning, he will want light to see and observe, as well as knowledge to apply the facts and occurrences met with in foreign countries."—1 *'Life of Lord Hardwicke,'* 394.

## ANCESTORS AND POSTERITY

"The merit of ancestors in a former age can never atone for the degeneracy of their posterity in the present."—*Idem*, 396.



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